

BEFORE THE COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THE MARYLAND-
WASHINGTON REGIONAL DISTRICT IN
MONTGOMERY COUNTY, MARYLAND
Office of Zoning and Administrative Hearings
Stella B. Werner Council Office Building
100 Maryland Avenue, Room 200
Rockville, Maryland 20850
(240) 777-6660

IN THE MATTER OF:
4825 MONTGOMERY LANE, LLC
Applicant

Mimi Brodsky Kress
Curt Schreffler
George Myers
William R. Landfair
C. Craig Hedberg

For the Application

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Attorneys for the Applicant

* * * * *
Susan Grudziecki
Community Participant in Opposition
* * * * *

Zoning Application No. G-908

Before: Martin L. Grossman, Hearing Examiner

HEARING EXAMINER'S REPORT AND RECOMMENDATION

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I. EXECUTIVE SUMMARY

Applicant:	4825 Montgomery Lane, LLC
LMA No. & Date of Filing:	G-908, filed October 14, 2011
Current Zone and Use:	Zone: R-60 Use: One-family home with detached garage
Zoning and Use Sought:	TS-R Zone Use: a 5-story multi-family building containing 4 residential units and 8 parking spaces
Location:	4825 Montgomery Lane, on the east side of West Lane and the north side of Montgomery Lane, approximately half way between Arlington Road and Woodmont Avenue, in Bethesda, subject to the Bethesda CBD Sector Plan
Area to be Rezoned:	6,525 sq. ft. gross tract (0.15 acres); the net tract is 6,217 sq. ft.
Density Permitted in TS-R Zone:	2.5 FAR; 150 dwelling units per acre
Density Planned:	2.5 FAR; 27 dwelling units per acre.
Public Use Space:	Required: 10%; Proposed: 10.6%
Active & Passive Recreation Space:	Required: 20%; Proposed: 23%
Parking Planned:	Required: 8 spaces; Proposed 8 spaces
Height Planned:	5 stories
Consistency with Master Plan:	Rezoning to the TS-R Zone is consistent with the recommendation of the Bethesda CBD Sector Plan
Neighborhood Response:	One neighbor, Susan Grudziecki, is in opposition based on concerns about parking; Jon Weintraub, Community Liaison for the Council of Unit Owners of the Edgemoor Condominium (CUOEC), supported the rezoning but expressed concern about parking; Richard Lawch, President, Board of Directors of City Homes of Edgemoor Homeowners Assoc., supports the rezoning.
Parking Compatibility Issue:	The one opponent is concerned that there will not be enough parking to accommodate visitors, contractors and delivery people; however, she concedes that the parking issue is not a basis for denial of this application, given the applicable regulations. Tr. 123-124.
Other Zoning Issues:	None
Planning Board Recommends:	Approval, with specified textual binding elements
Technical Staff Recommends:	Approval, with specified textual binding elements
Hearing Examiner Recommends:	Approval, Applicant having included the textual binding elements specified by the Planning Board

II. STATEMENT OF THE CASE

Application No. G-908, filed on October 14, 2011, requests reclassification of approximately 0.15 acres (6,525 square feet gross tract) of land in Bethesda from the R-60 Zone (Single-Family, Detached) to the TS-R Zone (Transit Station-Residential). The subject site is described as Lot 20, Block 13A in the Edgemoor Subdivision of Bethesda. The property is located at 4825 Montgomery Lane, on the east side of West Lane and the north side of Montgomery Lane, approximately half way between Arlington Road and Woodmont Avenue. The property is owned by Applicant 4825 Montgomery Lane, LLC, and bears a tax account number of 07-00488086.¹

The site will be developed with a five-story, multi-family building, containing 4 residential units and 8 parking spaces. There will be approximately 15,519 square feet of residential floor area. Because there will be fewer than 20 dwelling units, Section 25A-5(a) of the Montgomery County Code does not require any moderately priced dwelling units (MPDUs), and none are planned for this project. Parking will be provided in a street-level garage which will accommodate eight vehicles. The proposed development will be subject to preliminary plan and site plan approval by the Planning Board.

The application for rezoning was reviewed by the Technical Staff, and in an amended report dated August 31, 2012, Staff recommended approval of the application (Exhibit 37).² The Planning Board considered the application on September 13, 2012 and, by a vote of 4 to 0, recommended approval, with additional textual binding elements to which the Applicant has agreed. The Board's recommendation is contained in a letter to the Hearing Examiner dated September 19, 2012. Ex. 42.

This application is supported by the City Homes of Edgemoor Homeowner's Association Inc. (CHEHA), which is composed of 29 privately owned residences located nearby on Montgomery Lane. See September 7, 2012 letter of Richard Lawch, President, Board of Directors of CHEHA (Exhibit

¹ In addition to the affidavit of Mimi Kress asserting Applicant's ownership of the site (Exhibit 5), the Hearing Examiner takes official notice of Maryland tax records for Tax Account No. 07-00488086, which lists the Applicant as the owner.

² The Technical Staff Report is quoted and paraphrased frequently herein.

41). It is also supported by the Council of Unit Owners of the Edgemoor Condominium (CUOEC), as reported by Jon Weintraub, their Community Liaison. Exhibit 40. Mr. Weintraub did, however, express some concern about the adequacy of parking for the building. Exhibit 40.

The sole opposition comes from one neighbor, Susan Grudziecki, who wrote (Exhibit 22) and testified (Tr. 112-124) regarding her concerns about the adequacy of the proposed parking. Ms. Grudziecki's concern is that there will not be enough parking to accommodate visitors, contractors and delivery people; however, she conceded at the hearing that the amount of parking being provided is not a basis for denial of this application, given the applicable regulations. Tr. 123-124.

The hearing in this case was initially scheduled for March 12, 2012, but it was postponed twice at the Applicant's request (Exhibits 27, 29, 30 and 32). Subsequently, the Council adopted a zoning text amendment (ZTA 12-08), effective July 30, 2012, which eliminated a requirement for the TS-R Zone that parcels under 18,000 square feet had to have a single Development Plan in combination with an adjacent or confronting parcel in the TS-R Zone.

A public hearing was thereafter noticed for September 21, 2012 (Exhibit 33), and it proceeded as scheduled. Five witnesses were called by the Applicant, and the only opposition testimony was given by Ms. Grudziecki. The record was held open until October 1, 2012, to allow the Applicant the opportunity to file a revised development plan in accordance with the recommendations of the Planning Board. The revised Development Plan was timely filed as Exhibit 60(a), and the record closed as scheduled on October 1, 2012.

The Hearing Examiner finds that the proposed development satisfies the purpose and standards of the TS-R Zone; meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance; will be compatible with development in the surrounding area; is consistent with the Bethesda CBD Sector Plan; and will be in the public interest. The Hearing Examiner therefore recommends approval.

III. FACTUAL BACKGROUND

A. Zoning and Area Planning History

The zoning and area planning history of the subject site was set forth in the Technical Staff report (Exhibit 37, p. 13):

1. 1954 - Countywide Comprehensive Zoning confirmed R-60 Zone
2. 1958 - Countywide Comprehensive Zoning confirmed R-60 Zone
3. F-736 - Adopted 8/15/72 reconfirmed R-60 Zone
4. G-20 - Bethesda CBD adopted 12/6/77 reconfirmed R-60 Zone
5. G-665 - Georgetown Branch Master Plan adopted 6/26/90, reconfirmed R-60 Zone
6. G-666 - Bethesda Chevy Chase Map Plan adopted 6/26/90, reconfirmed R-60 Zone
7. G-711 - Bethesda CBD Sector Plan, adopted 10/11/94 reconfirmed R-60 zone, recommended TS-R Zone

B. Subject Property

The subject site is described as Lot 20, Block 13A in the September 27, 1928 Re-Subdivision Plat of Edgemoor in Bethesda (Exhibit 8).³ It is within the Transit Station Residential District, as shown in the Bethesda CBD Sector Plan, approved July 1994. The property is located at 4825 Montgomery Lane, on the northeast corner of the intersection of West Lane and Montgomery Lane, approximately 300 feet east of Arlington Road and 250 feet west of Woodmont Avenue. According to Technical Staff, the site is relatively flat, with a slight increase in grade along the front of Montgomery Lane. Exhibit 37, p. 3. It is rectangular in shape, with approximately 70 feet of frontage on Montgomery Lane and 95 feet of frontage on West Lane.

The site is developed with a two-story, single-family house with a detached one car garage. Exhibit 23(b), p. 1. Both structures will be razed under this application.

The site and its immediate surroundings are depicted in a diagram of the Transit Station Residential District from the Sector Plan (p. 81), and in the central portion of an aerial photo attached to Applicant's Land Use Report (Exhibit 23(b)), which are reproduced on the next page.

³ Technical Staff incorrectly lists the property as Lot 23 (Ex. 37, p. 3); however, the rezoning application (Ex. 2); the certified metes and bounds (Ex. 6); the Subdivision Plat (Ex. 8); and the State tax records all list the property as Lot 20.



The gross tract area of the property is 6,525 square feet (including the land that is proposed for dedication), and the proposed net tract area is 6,217 square feet. As shown on the NRI/FSD⁴ (Exhibit 12), which was approved by Technical Staff on March 9, 2011, the property is not located within a Special Protection Area or a Primary Management Area, and does not contain any forest, streams, steep slopes, buffers or flood plains. Applicant's engineer, Curt Schreffler, testified that there is one 32-inch, silver maple tree currently on the site. It meets the definition of a specimen tree, but it is in poor condition. There no other environmental issues. Tr. 43-45. Technical Staff also confirms in its report that "The site does not contain any environmentally sensitive features as defined by the Planning Board's Approved Environmental Guidelines (2000)." Exhibit 37, p. 20.

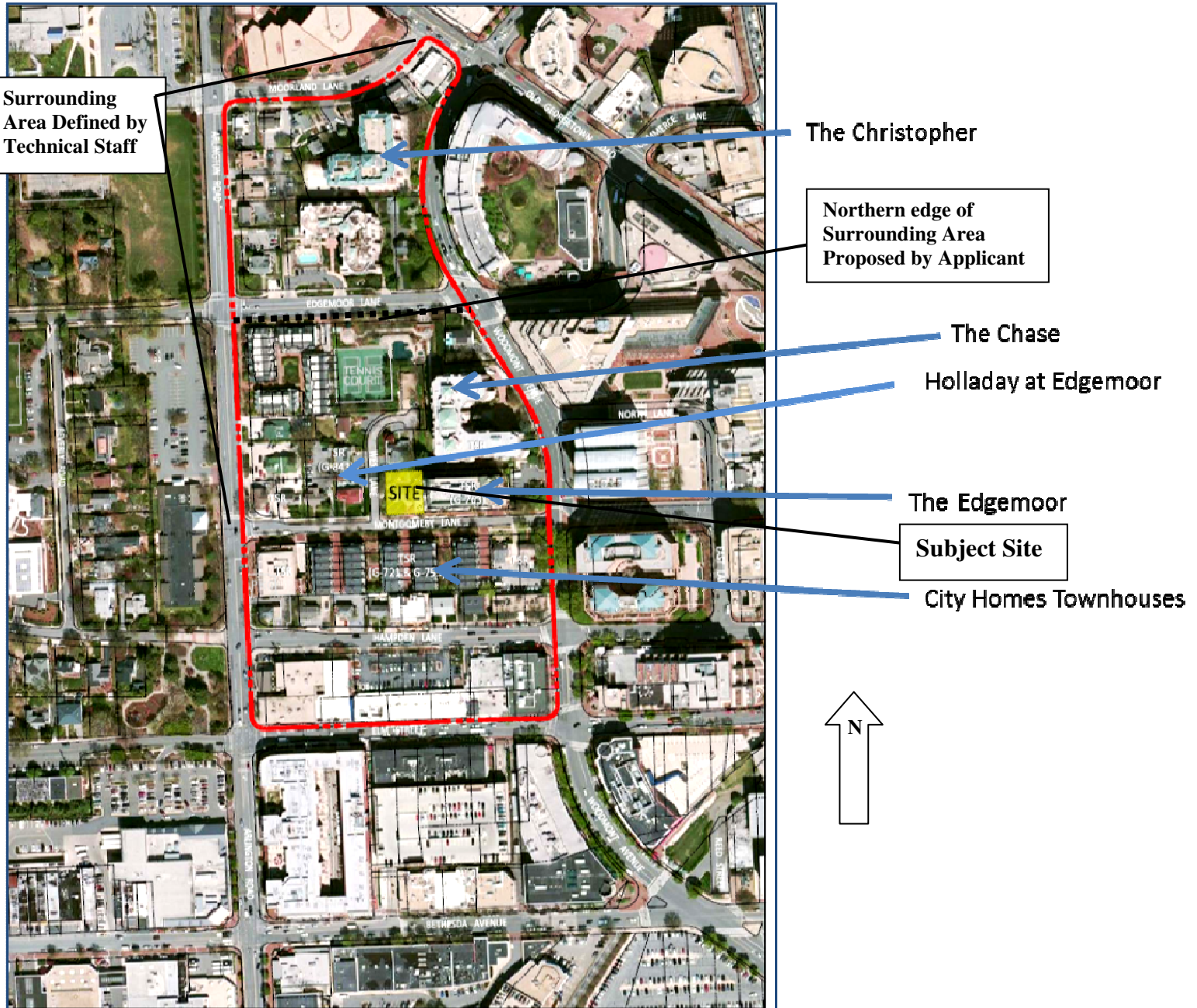
C. Surrounding Area and Adjacent Development

The surrounding area must be identified in a floating zone case so that compatibility can be evaluated properly. The "surrounding area" is defined less rigidly in connection with a floating zone application than in evaluating a Euclidean zone application. In general, the definition of the surrounding area takes into account those areas that would be most directly affected by the proposed development. In the present case, Technical Staff recommends (Exhibit 37, p. 3) designating the surrounding area boundaries as:

Moorland Lane on the north, Woodmont Avenue on the east, Elm Street on the south and Arlington Road on the west. This area is defined as the Transit Station Residential Development Area in the Sector Plan.

The Surrounding Area, as defined by Technical Staff, is depicted in their Surrounding Area Map (Exhibit 37, p. 4). The map also specifies the locations of some of the developments near the subject site. It differs from the surrounding area definition proposed by Applicant's land planner, Bill Landfair, only on the north. Mr. Landfair would shorten the northern defined area to Edgemoor Lane, as shown by a black dotted line on map, below:

⁴ The term NRI/FSD stands for "Natural Resource Inventory / Forest Stand Delineation".



As observed by Mr. Landfair, it is unlikely that the proposed development would have significant effects reaching further north than Edgemoor Lane; however, the Hearing Examiner will accept Technical Staff's definition of the Surrounding Area because it makes sense to have a defined area that is coextensive with the Transit Station Residential District in the Sector Plan.

Technical Staff describes the surrounding area very extensively in their report (Exhibit 37, pp. 6-7), and their complete description is quoted below in footnote 5.⁵ The critical fact about the Surrounding Area is that it is in the part of the Bethesda CBD Sector Plan recommended for the TS-

⁵ Immediately north of the subject site and along West Lane, the property is zoned R-60 and improved with a one-family residential house that contains a commercial office use. At the end of West Lane on its north side, the property is zoned TS-R and improved with a one family house and office use. On Woodmont Avenue, north and east of the site, is a TS-R zoned property developed with a 12 story (120 foot height) multi-family building known as The Chase. The Chase's recreation facilities are located on the south side of Edgemoor Lane between Woodmont Avenue and Arlington Road. The remaining properties on Edgemoor Lane and along Arlington Road are developed with 3 story (36 foot height) residential townhouses in the TS-R zone. On the north side of Edgemoor Lane the property is zoned TS-R and developed with the Edgemont at Bethesda a multi-family building of 90 feet. Directly north of the Edgemont at Bethesda and on Woodmont Avenue south of Moorland Lane is the Christopher a multifamily building of approximately 146 feet. Along the east side of Arlington Road between Edgemoor Lane and Moorland Lane are properties zoned R-60 or TS-R and developed with either residential or commercial uses, respectively.

East of the site, the property is developed under the TS-R zone in accordance with Local Map Amendment (LMA) G-763, as a 10 story (100 foot height) multi-family building known as the Edgemoor. Across West Lane and northwest of the site, the property known as Holladay at Edgemoor (for lots 24, 25 and 27) has been approved under the TS-R zone in accordance with Local Map Amendment G-843 for 48 multi-family units and a building height that will vary from 4 to 6 stories but does not exceed a height of 65 feet. A LMA (G-912) has been filed with the Hearing Examiner's Office for Lot 26, the property west of and directly across West Lane from the subject site. LMA G-912 seeks to rezone Lot 26 to the TS-R Zone, incorporate Lot 26 into the parcels approved under G-843 and construct a building 70 feet high for 113 multi-family units on all the affected properties. An accompanying Development Plan Amendment (DPA-12-03) was also filed with G-912 and will amend the development plan approved under G-843. The remaining properties along the northern side of Montgomery Lane are improved with one family houses that contain commercial uses. These properties are zoned TS-R but have not yet been redeveloped under that zone.

South of the site and across the Montgomery Lane, the properties are developed with 4 story) townhouses under the TSR-zone in accordance with several Local Map Amendments (LMA-721, G-775 and DPA-98-1 and 98-2 and 00-2)

The remaining properties along the south side of Montgomery Lane going east towards Woodmont Avenue are improved with one family houses that contain office and apartment uses. These properties and the entire block along Woodmont Avenue and the northwest corner of Hampden Lane were classified into the TS-R zone in accordance with LMA G 819 for a multi-family building with 50 to 70 dwelling units. A DPA 12-02 has been submitted to the Hearing Examiner's Office to amend zoning case G- 819 to reduce the approved minimum number of multi-family housing units from "50 to 40 units" to "retain the maximum number of units at 70" and "to construct a minimum of 15% Moderately Priced Dwelling Units (MPDUs) on site."

Along the east side of Arlington Road between Edgemoor Lane and Hampden Lane, the properties are zoned TS-R. Some properties have been redeveloped under this zone with 3 story residential townhouses, while the remaining properties are improved with one family houses that contain commercial office uses. The remaining properties along this side of Arlington Road between Hampden Lane and Elm Street are zoned C-2 and developed with 1 and 2 story commercial uses.

The majority of properties along the north side of Hampden Lane are improved with one family houses that contain commercial uses in the TS-R zone or multi-family residential uses in the R-10 Zone. A one family house at 4917 Hampden Lane is boarded up and vacant.

The properties along the south side of Hampden Lane are zoned C-2 (General - Commercial) and are developed as a low rise strip shopping area with commercial and office uses. The properties along the north side of Elm Street are also zoned C-2 and have developed with a mix of commercial and office uses. . . .

R Zone, and the subject site is surrounded by uses in the R-60 and TS-R Zones (with just a smattering of R-10 zoned property to the southeast). The Central Business District of Bethesda is a half block to the east of the site, and commercial properties in the C-2 Zone are located just south of the Transit Station Residential District. One half block to the west of the site is Arlington Road, and across Arlington Road are properties in the R-60 Zone.

Immediately north of the subject site is property in the R-60 Zone which contains a single-family house being used as a commercial office. Immediately east of the subject site is the 10-story multi-family building known as the Edgemoor, which is in the TS-R Zone. Immediately northwest of the subject site, across West Lane, is the property known as Holladay at Edgemoor, which has been approved under the TS-R zone in accordance with Local Map Amendment G-843 for 48 multi-family units and a building height that will vary from 4 to 6 stories. An application (LMA G-912) to rezone the property across West Lane (Lot 26), directly to the west of the subject site, was filed in conjunction with development previously authorized under LMA G-843, but the applicant has withdrawn the application for technical reasons, and plans to re-file, incorporating Lot 26 into the parcels approved under G-843. The plan is to construct a 70-foot building in the TS-R Zone for 113 multi-family units on all the affected properties. Confronting the subject site, across Montgomery Lane to the south, is the City Homes Townhouse development, which includes four-story townhouses in the TS-R Zone.

D. Proposed Development

1. Development Concept and Applicant's Vision for the Project

The Applicant seeks to reclassify the subject site to the TS-R Zone with the intent of building a project near a metro station that would be considered a transit-oriented project. According to Applicant's managing member, Mimi Kress, Applicant's vision for the subject property is construction of a "high end" project of luxury condominiums, which will fit in well with the other projects in the

neighborhood and is desirable within the market. Tr. 14. Applicant's architect, George Myers, initially explored a townhouse concept because there are townhouses as well as apartment buildings in the area, but he concluded that the proposed structure was the best type of building in the TS-R zone. Tr. 52-53.

The building will be five stories, with the first level being the garage and with four individual units above. Each unit will be approximately 2600 net square feet, and each will have a two car garage at grade level, yielding a total of eight parking spaces. Vehicular access into each for the four street-level garages will be provided from West Lane, but the primary pedestrian entrance and the entry lobby will be on Montgomery Lane. Tr. 14-15. A good sense of the proposed building can be garnered from the architect's renderings (Exhibit 50) reproduced below:



VIEW FROM MONTGOMERY LANE LOOKING EAST



VIEW FROM MONTGOMERY LANE LOOKING WEST

According to Mr. Myers, the building was designed with the primary rooms (*i.e.*, bedrooms, kitchen, living and dining rooms) facing Montgomery and West Lanes so that the front elevations would have “lots of glazing” and would look good since they are facing the public view. The stairs, elevators, trash room and trash chute are located on the two back sides (north and east). The building

is designed primarily in a more traditional, residential style because that is typical of the neighborhood. It will have double-hung windows; a porch on the corner; and covered porches, which is a very residential feature, typical of a lot of older, smaller apartment buildings. The building will be articulated with a base, a middle and a top, which is a traditional way of detailing a residential building. Tr. 54-59. It will also have a green roof to aid in stormwater management. Tr. 119-120.

In Mr. Myers' opinion, the building will fit well in the neighborhood and will be compatible in terms of scale and massing with the adjoining Edgemoor, which is taller at 10 stories, and the City Home Townhouses, across Montgomery Lane, which is one story shorter. Tr. 56-57. Applicant will provide an enhanced streetscape along both West Lane and Montgomery Lane. A sidewalk for West Lane will be provided as part of this project, and there will also be street trees, special pavers and lighting. Tr. 72-73.

Technical Staff agreed that "The design of the building successfully communicates a "residential character" including features similar to those of the residential townhouses directly across Montgomery Lane." Exhibit 37, p. 16. Staff added that, ". . . the applicant has produced an innovative and creative building for this site that will blend well with existing and proposed residential developments nearby in terms of height and massing." Exhibit 37, p. 21. The Planning Board also found "that the rezoning application is consistent with the Sector Plan for the Bethesda Central Business District (CBD). The application will comply with the purposes, standards and regulations of the TS-R zone and the development as reflected on the Development Plan and further refined by the binding elements will be compatible with the surrounding area." Exhibit 42, p. 1.

As will be discussed more fully below, the Hearing Examiner also finds that Applicant's development concept and vision for the project constitute a well-conceived plan for the development of the subject site, in accordance with the standards set forth in the Zoning Ordinance and the objectives of the applicable Sector Plan.

2. Development Plan & Binding Elements in LMA G-908

Pursuant to Code § 59-D-1.1, development in the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. Under Code §59-D-1.3, this development plan must contain several elements:

- (a) A natural resources inventory;
- (b) A surrounding area map, showing the relationship to the site and use of the adjacent land;
- (c) A land use plan showing site access; locations and uses of all buildings and structures; a preliminary classification of dwelling units; locations of parking areas, including number of parking spaces; location of land to be dedicated to public use; location of land intended for common or quasi-public use but not intended to be in public ownership; and a preliminary forest conservation plan;
- (d) A development program stating the sequence of proposed development;
- (e) The relationship, if any, to the County's capital improvements program;
- (f)&(g) . . . [Inapplicable to the TS-R Zone];
- (h) A diagram showing general build and height of principal buildings, their relationship to each other and adjacent areas; and
- (i) . . . [Inapplicable because the property does not lie within a special protection area]

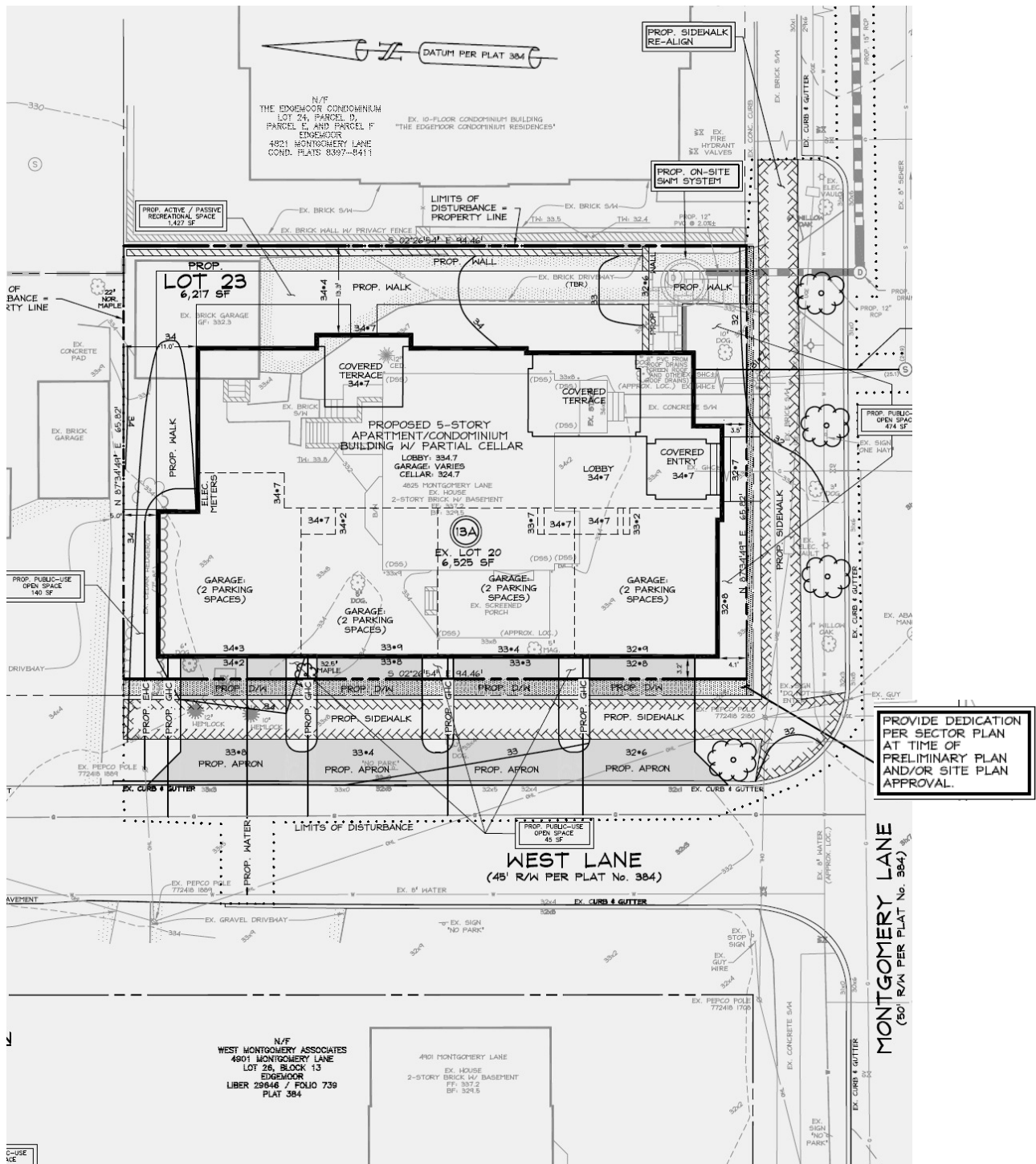
The Development Plan and the Land Use Plan that constitutes one of its primary parts are binding on the Applicant except where particular elements are identified as illustrative or conceptual. Illustrative elements may be changed during site plan review by the Planning Board, but the binding elements cannot be changed without a separate application to the District Council for a development plan amendment.

The land use plan for the present zoning application, Exhibit 60(a), is titled "Development Plan (Land Use Plan)" and will be referred to by either name in this report. The textual binding elements are printed on the development plan, and they are as follows:

TEXTUAL BINDING ELEMENTS:

1. Density: maximum number of dwelling units is 4.
2. Building height will be 5 floors:
 - a maximum height to the top of the roof is 65 feet.
 - a maximum height to the top of the parapet wall is 69 feet.
3. The primary pedestrian entrance to the proposed building shall be from Montgomery Lane.
4. The Applicant must provide dedication along the property's frontage on Montgomery Lane and along the property's frontage on West Lane.
5. Vehicular access to the property will be from West Lane.

A copy of the Development Plan (Exhibit 60(a)) is reproduced below and on the following pages. To make its details more visible, the site layout diagram is shown separately below. It depicts the proposed location of the planned structure, as well as additional information regarding the planned development.



In addition to the site layout diagram, the development plan contains the following “General Notes” and a variety of tables reproduced on succeeding pages:

GENERAL NOTES

- 1) WATER CATEGORY - 1 SEWER CATEGORY - 1
- 2) BOUNDARY INFORMATION BASED ON A SURVEY BY CAS ENGINEERING, DATED JANUARY, 2011.
- 3) TWO-FOOT CONTOUR DATA BASED ON A SURVEY BY CAS ENGINEERING, DATED JANUARY, 2011.
- 4) TOTAL LOT AREA: LOT 20 = 6,525 SQ. FT. (0.150 ACRES)
- 5) PROPERTY SHOWN ON TAX MAP HN 122, LOT 20, BLOCK 13A, EDGEMOOR.
- 6) PROPERTY SHOWN ON WSSC 200' SHEET 209 NW 05.
- 7) PROPERTY SHOWN ON MONTGOMERY COUNTY SOILS SURVEY MAP No. 27. SOIL TYPE(S): 2UB, HYDROLOGIC SOIL GROUP B.
- 8) FLOOD ZONE 'X' PER F.E.M.A. FIRM MAPS, COMMUNITY PANEL NUMBER 24031C0455D.
- 9) SITE IS LOCATED IN THE LITTLE FALLS BRANCH WATERSHED. (USE I-P)
- 10) LOCAL UTILITIES INCLUDE:
WATER & SEWER - WASHINGTON SUBURBAN SANITARY COMMISSION
ELECTRIC - PEPCO
TELEPHONE - VERIZON
GAS - WASHINGTON GAS

PARKING TABULATION DATA

IN ACCORDANCE WITH SECTION 59-E-3.7, DWELLING, MULTIPLE-FAMILY
FOR EACH DWELLING UNIT WITH THREE OR MORE SEPARATE BEDROOMS, 2 SPACES
PROPOSED: 4 DWELLING UNITS X 2 SPACES = 8 SPACES REQUIRED
PROPOSED PARKING: 8 SPACES (2 SPACES PER GARAGE; 4 GARAGES TOTAL)
NO PARKING IS PROPOSED WITHIN ANY MINIMUM FRONT, REAR, OR SIDE YARD

BUILDING CLASSIFICATION / PHASING

THE PROPOSED BUILDING, SHOWN HEREON, IS CLASSIFIED AS A CONDOMINIUM / APARTMENT BUILDING. ONE 3-BEDROOM CONDOMINIUM / APARTMENT WILL BE LOCATED ON EACH FLOOR. THE LOWEST FLOOR WILL SERVE AS THE GARAGE AND MAIN ENTRY TO THE BUILDING. EIGHT (8) PARKING SPACES WILL BE PROVIDED WITHIN THE GARAGE LEVEL.

THE DEVELOPMENT TIMELINE ASSOCIATED WITH THIS PLAN WILL BE OCCUR IN ONE STAGE.

SITE / ZONING DATA

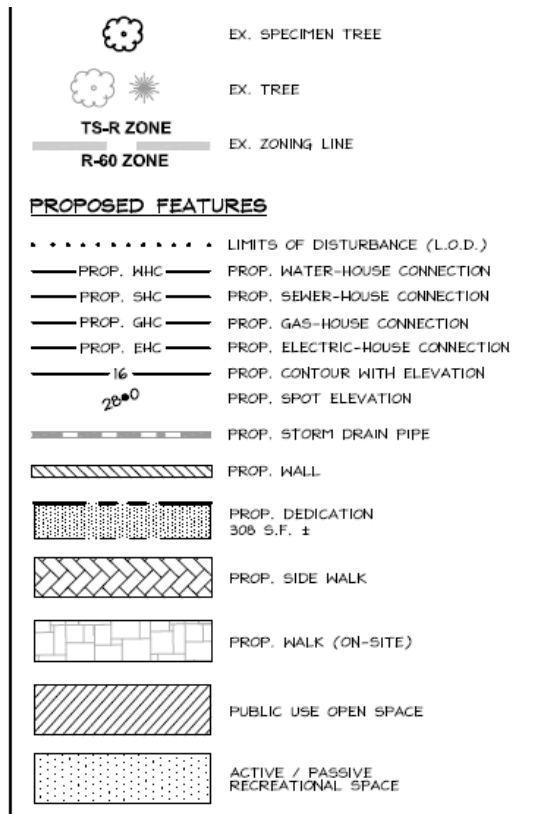
GROSS SITE AREA: 6,525 S.F. (0.15 ACRES), PER RECORD PLAT
 PROPOSED DEDICATION: 308 ± S.F. (0.007 ACRES)
 NET TRACT AREA: 6,217 ± S.F. (0.143 ACRES)

LE
TH
WIL

PROPOSED ZONING: TS-R		PROVIDED
MINIMUM LOT AREA	18,000 S.F. *	6,217 S.F.
BUILDING HEIGHT	NO HEIGHT LIMIT	5 FLOORS (65' TO TOP ROOF) (69' TO PARAPET)
FAR	2.5 (15,542.5 S.F.)	2.49% (15,519 S.F.)
SETBACK FROM STREET R-O-W	0 FEET	3.5 FEET / 3.2 FEET
SETBACK FROM OTHER LOT LINES	0 FEET, SIDE 0 FEET, REAR	5.0 FEET, SIDE 13.3 FEET, REAR
PUBLIC USE OPEN SPACE	10% (622 S.F.)	10.6% (659 S.F.)
RECREATIONAL SPACE ACTIVE / PASSIVE	20% (1,244 S.F.)	23.0% (1,427 S.F.)
PARKING	8 SPACES	8 SPACES
MPDU'S	N/A (< 20 TOTAL UNITS)	NONE

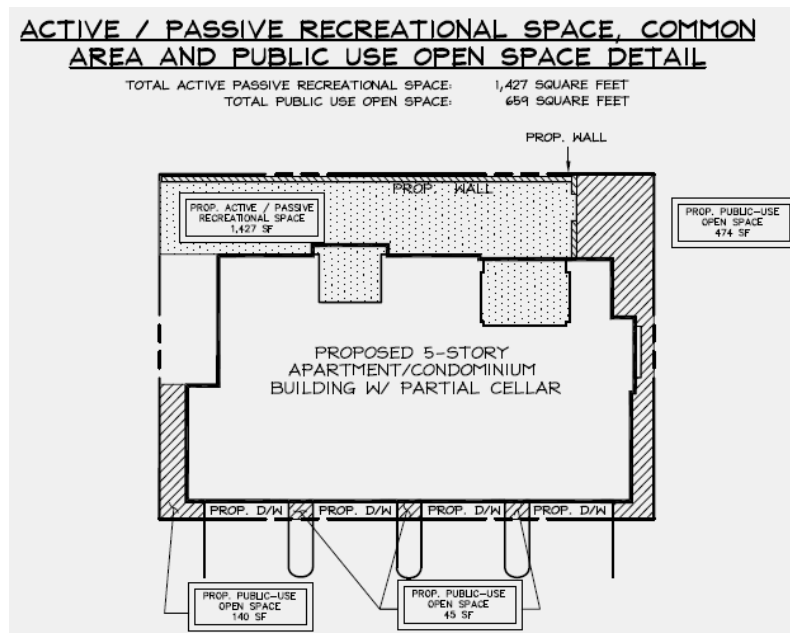
* EXCEPT AS PROVIDED IN SECTION 59-C-8.41 OF THE ZONING ORDINANCE WHICH ALLOWS FOR THE APPROVAL OF SMALLER PARCELS IN THE THE TSR OR TSM ZONES.

THIS PROJECT IS NOT RELATED TO ANY COUNTY CAPITAL IMPROVEMENT PROGRAM (CIP).



TEXTUAL BINDING ELEMENTS

1. DENSITY: MAXIMUM NUMBER OF DWELLING UNITS IS 4.
2. BUILDING HEIGHT WILL BE 5 FLOORS:
-A MAXIMUM HEIGHT TO THE TOP OF THE ROOF IS 65 FEET.
-A MAXIMUM HEIGHT TO THE TOP OF THE PARAPET WALL IS 69 FEET.
3. THE PRIMARY PEDESTRIAN ENTRANCE TO THE PROPOSED BUILDING SHALL BE FROM MONTGOMERY LANE.
4. THE APPLICANT MUST PROVIDE DEDICATION ALONG THE PROPERTY'S FRONTAGE ON MONTGOMERY LANE AND ALONG THE PROPERTY'S FRONTAGE ON WEST LANE.
5. VEHICULAR ACCESS TO THE PROPERTY WILL BE FROM WEST LANE.

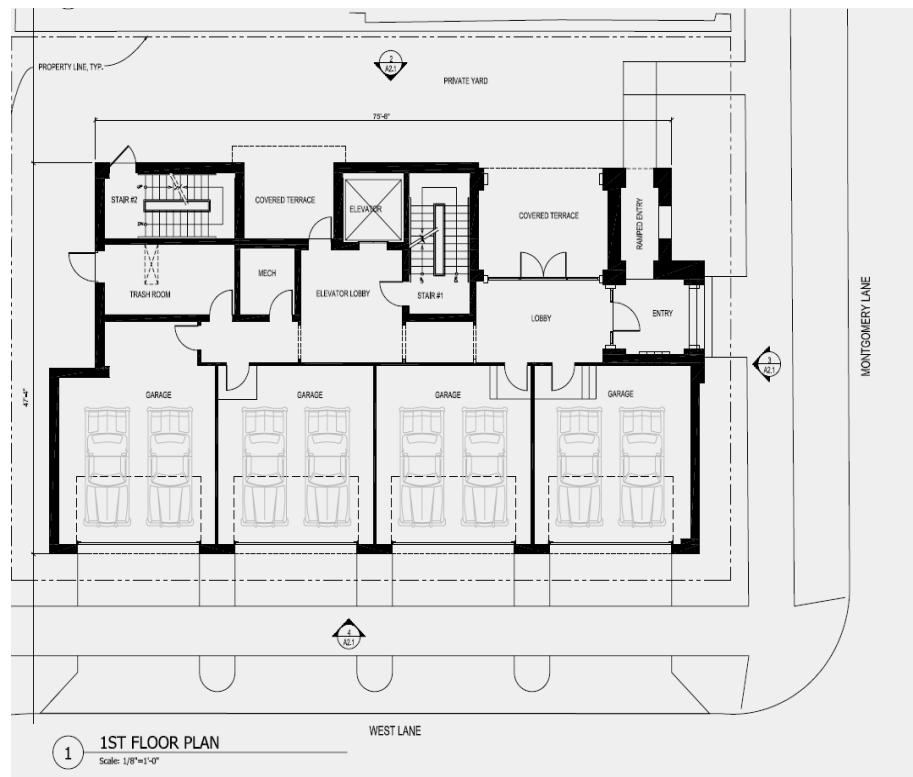


The project will be developed in one phase, and will provide 10.6 percent public use space (659 square feet) and 23 percent active or passive recreation space (1,427 square feet), with final areas to be determined at site plan. The above diagram from the development plan demonstrates the proposed active and passive recreational area and the proposed public use space.

Applicant is proposing to dedicate one foot along Montgomery Lane and two and a half feet along West Lane, but the exact final width of West Lane and the total areas to be dedicated will be determined during the subdivision and site plan process.

Applicant has also provided a typical floor plan and a garage plan (Exhibit 23(f)):





Building elevations (Exhibit 23(e)) are depicted below:



3. Conformance with the Sector Plan

The subject site is located within the Transit Station Residential District of the Bethesda CBD Sector Plan, approved and adopted in 1994. Technical Staff provided a very thorough discussion of the Sector Plan's application to this case in their report (Exhibit 37, pp. 14-18). Staff's conclusion is that "The proposed development is consistent with the Bethesda CBD Sector Plan." Exhibit 37, p. 1. The Planning Board agreed, stating, "The Planning Board finds that the rezoning application is consistent with the Sector Plan for the Bethesda Central Business District (CBD)." Exhibit 42, p. 1. The Board added (Exhibit 42, p. 2),

The Planning Board recognizes the importance of the rezoning as it sets forth the land use and zoning recommendations contained in the Sector plan for the surrounding community. This rezoning is part of the Sector Plan's broad vision to provide an urban village in the Bethesda CBD that creates attractive land uses, encourages social interaction and promotes community identity.

As discussed by Staff, Sector Plan objectives include stepping down building heights from the Metro Center to adjacent areas, clearly identifying a building's entrance in the façade design, locating the entrance at street level and applying the TS-R Zone flexibly so as "*. . . to allow the district to achieve a low rise, high density 'urban village' pattern.*" Sector Plan, p. 80. This project is consistent with those goals. Exhibit 37, p. 14.

Although the proposed building fails to achieve the density of at least 45 dwelling units per acre recommended in the Sector Plan, Technical Staff found the density of 27 dwelling units per acre proposed here to be acceptable because the building will be "consistent with other nearby residential uses of comparable heights less than 65 feet that have been developed with densities between 24 to 36 dwelling units per acre." Exhibit 37, p. 15. Staff also noted that the proposed height provides a transition between the taller TS-R developments abutting to the east and that of the townhouses to the west along Arlington Road, and it is consistent with "*step down building heights*" illustrated on page

42 of the Plan. The proposed floor area ratio (FAR) of 2.5 is consistent with the Sector Plan recommendations and utilizes the full FAR permitted in the TS-R zone.

Staff also found that the private and public open space to be provided on the site appears to be consistent with the Sector Plan, and those features will be addressed at Site Plan review.

In discussing the Urban Design Guidelines contained in the Sector Plan, Staff observed that the TS-R Zone's restriction on lot sizes to a minimum of 18,000 square feet had been relaxed by Zoning Text Amendment (ZTA) 12-08, which permits smaller lots, such as the subject site, to be classified in the TS-R Zone. The project is consistent with the goals of the other design guidelines, which encourage low-rise buildings, setbacks consistent with the urban form, projection of a residential image through architectural design, encouraging street life by placing the entrances on the street side, and locating parking so that it is less visible from the street.

Finally, Staff noted that the project will be consistent with the Sector Plan's guidance in that the small building will contribute to the "fine-grain" of the neighborhood. Exhibit 37, p. 18.

The Hearing Examiner agrees with Technical Staff and the Planning Board, and finds that this project is in substantial compliance with the zoning, land use, density and design recommendations of the Bethesda CBD Sector Plan.

4. Public Facilities (Transportation, School Capacity and Water & Sewer Service)

Zoning Ordinance §59-H-2.4 (f) requires that the application for rezoning provide "Sufficient information to demonstrate a reasonable probability that available public facilities and services will be adequate to serve the proposed development under the Growth Policy standards in effect when the application is submitted." Applicant and Technical Staff provided evidence with regard to transportation, schools, water and sewer service and other utilities.

a. Transportation:

Craig Hedberg testified at the hearing as an expert in transportation planning. He described Montgomery Lane as one lane westbound between Woodmont Avenue and West Lane, and two lanes of traffic (eastbound and westbound) between West Lane and Arlington Road. There is no parking allowed on Montgomery Lane east of Arlington Road up to the subject site. Just east of the site frontage, there are two parallel spaces on the north side and curbside parking on the south side, amounting to a total of six to seven spaces. There is a two-hour posted time limit on the spaces. No parking is allowed along West Lane. Tr. 104-105.

Mr. Hedberg prepared a transportation statement which summarizes the net projected peak-hour trips. Exhibit 18. There is an existing one-family unit on site which would be replaced by the four proposed condominium units. The trip generation comparison indicates that there would be one additional peak hour trip beyond what is currently generated by the single unit on the site. That is well within that 30-trip criteria, below which a full traffic study is not required under Local Area Transportation Review (LATR) regulations. The site will also generate fewer than three peak-hour trips, and therefore no Policy Area Mobility Review (PAMR) restrictions come into effect. Tr. 106-107. This information is contained in a Table reproduced from the Staff Report (Exhibit 37, p. 19):

**TABLE 1
SUMMARY OF SITE TRIP GENERATION
PROPOSED EDMOOR DEVELOPMENT**

Trip Generation	Morning Peak-Hour			Evening Peak-Hour		
	In	Out	Total	In	Out	Total
Proposed Density – 4 Apartments/Condominiums	1	1	1	1	1	1
Existing Density – 1 Single-family Dwelling Unit	0	1	1	1	0	1
Net New Trips	1	0	1	0	1	1

In Mr. Hedberg's professional opinion as a transportation planner, the proposed rezoning will not adversely impact the surrounding area from the standpoint of traffic and traffic conditions. These are very low volume streets because West Lane itself is a cul-de-sac. With only westbound traffic allowed on Montgomery Lane up to West Lane, there is not going to be traffic heading towards the CBD on Montgomery Lane. Mr. Hedberg also opined that the transportation-related public facilities are adequate to accommodate this rezoning application. "They'll virtually be an imperceptible impact on the traffic situation in conjunction with this redevelopment." Tr. 107-108.

Technical Staff reached the same conclusions as Mr. Hedberg regarding LATR and PAMR (Exhibit 37, pp. 18-20):

Local Area Transportation Review

The proposed development will not generate 30 or more peak-hour trips during the weekday morning and evening peak periods, therefore, a traffic study is not required for the subject application. With documentation of site trip generation stated in Table 1, the application satisfies the LATR requirements of the APF test.

Policy Area Mobility Review

To satisfy the PAMR requirements of the APF test, a development located within the Bethesda CBD Policy Area is required to mitigate 25% of "new" peak-hour trips generated by the development. However, since the proposed development will not generate more than three peak-hour trips during the weekday morning and evening peak periods, the subject petition is not subject to the PAMR requirements of the APF test. . .

Staff also noted Applicant is proposing to dedicate frontage along both Montgomery and West Lanes, and that at the time of future approvals, other transportation issues will be reviewed in more detail.

Based on this record, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available transportation facilities will be adequate to serve the proposed development.

Finally, Mr. Hedberg opined that the proposed pedestrian sidewalks and vehicular points of access to the garages will be safe, adequate and efficient, and the rezoning will be in the public interest, from a transportation standpoint. Tr. 108. There is no evidence to the contrary, and the Hearing Examiner so finds.

b. School Capacity:

The subject property is located in the Bethesda-Chevy Chase (B-CC) Cluster, which consists of Bethesda Elementary School, Westland Middle School, and Bethesda-Chevy Chase High School. Technical Staff reports that the proposed development is expected to generate one elementary school student, one middle school student and one high school student. Exhibit 37, p. 14. Bruce H. Crispell, Director of the Division of Long-range Planning, Montgomery County Public Schools (MCPS), stated in an e-mail to Technical Staff dated August 3, 2012 (Attachment B to Exhibit 37) that a new school test for FY 2013 was accepted by the Planning Board and became effective on July 1, 2012. This new test reflects the County Council's action on MCPS's FY 2013-2018 Capital Improvements Program (CIP). Funding is now included for several elementary school additions and a new middle school in the B-CC Cluster.

According to Mr. Crispell, based on the FY 2013 school test, the elementary and middle schools within the B-CC cluster are not in a moratorium and no school facility payment is required. At the high school level, B-CC High School is projected to be over capacity by close to 500 students by 2017. A feasibility study for an addition will be conducted this year and a request for design and construction funds will be included in a future CIP. In order to avoid a development moratorium, the County Council put a "placeholder" capital project in the adopted FY 2013-2018 CIP which keeps the B-CC Cluster out of moratorium in FY 2013, but requires a school facility payment at the high school level for subdivision approvals in FY 2013.

Given this record, the Hearing Examiner finds that Applicant has demonstrated a reasonable probability that available school facilities will be adequate to serve the proposed development.

c. Water and Sewer Service and Other Utilities:

Technical Staff reports that the subject site is served by existing sewer and water mains, and is currently in Water Service Category W-1 and Sewer Service Category S-1. Exhibit 37, p. 13.

Applicant's civil engineer, Curt Schreffler, testified that public utilities are available immediately in front and adjacent to the site, with the exception of the storm drain extension, which Applicant will add to serve the site. Tr. 40. Applicant's land planner, Bill Landfair, further testified that the site is close to both police stations and fire stations. The police station is on the other side of Old Georgetown Road, just four blocks from the subject property, and the nearest fire station is roughly a similar distance. Tr. 90. Technical Staff reports that the Bethesda Police Station is located less than one half mile east of the site at the intersection of Wisconsin and Montgomery Avenues. The Bethesda Fire Station (Company 6) is located less than one-half mile south of the site at the intersection of Wisconsin Avenue and Bradley Boulevard. The Bethesda Chevy Chase Rescue Station No. 1 is located at the corner of Old Georgetown Road and Bradley Boulevard, roughly a half mile from the site. Exhibit 37, p. 14.

Based on the entire record, the Hearing Examiner finds that, although more detail will be produced at subdivision, Applicant has sufficiently demonstrated the adequacy of public facilities at the rezoning stage.

5. Environmental Issues

Applicant's NRI/FSD (Exhibit 12) was approved by Technical Staff on March 9, 2011. The subject site is not located within a Special Protection Area or a Primary Management Area, and does not contain any forest, streams, steep slopes, buffers or flood plains. Applicant's engineer, Curt Schreffler, testified that there is one 32-inch, silver maple tree currently on the site. It meets the definition of a specimen tree, but it is in poor condition. There are no other environmental issues. Tr. 43-45. Technical Staff also confirms in its report that "The site does not contain any environmentally sensitive features as defined by the Planning Board's Approved Environmental Guidelines (2000)." Exhibit 37, p. 20.

a. Forest Conservation:

Technical Staff reports that the zoning application will be subject to a tree save plan, which will be triggered at later stages in the development process. An application for a forest conservation exemption (# 42012104E) was submitted on January 20, 2012. The exemption request was confirmed on January 31, 2012, as qualifying under 22A-5(s) (2) of Forest Conservation Law. The associated tree save plan will be submitted and formally reviewed at the time of subdivision. An informal tree save plan submission shows the planting of 4" caliper trees within the right-of-way (ROW) as mitigation for the removal of a specimen tree. A tree variance is not required. Exhibit 37, p. 20.

b. Stormwater Management and Sediment Control:

A stormwater management concept plan for the subject site was approved by DPS on February 3, 2012 (Exhibit 47). The stormwater management concept plan proposed for this application consists of a green roof to treat and filter storm runoff. It will also have an underground filter structure located in the southeast corner of the site, which will capture additional site runoff, filter it and then discharge it into a public storm drain located about 200 feet down Montgomery Lane. The Applicant will be extending that public storm drain system approximately 200 feet to serve the site. Tr. 37-38.

In Mr. Schreffler's opinion, there will be no adverse impact on the surrounding area from the standpoint of stormwater runoff drainage, stormwater management or sediment control. Moreover, the entire site will be stabilized and landscaped, and new streetscaping and street trees will be added in the public right-of-way. Because the site is so small and already developed, there is no natural vegetation that can be preserved. Tr. 46.

Stormwater management will be reviewed at subdivision, and Technical Staff reported no environmental issues warranting denial of this application. The Hearing Examiner is satisfied that the environment will be adequately protected.

E. Community Concerns

As previously mentioned, this application is supported by the City Homes of Edgemoor Homeowner's Association, Inc. (CHEHA), which is composed of 29 privately owned residences located directly across Montgomery Lane from the subject site. *See* September 7, 2012 letter of Richard Lawch, President, Board of Directors of CHEHA (Exhibit 41). It is also supported by the Council of Unit Owners of the Edgemoor Condominium (CUOEC), which is located immediately to the east of the subject site. *See* signed e-mail from their representative, Jon Weintraub, dated September 12, 2012. Exhibit 40. Mr. Weintraub did, however, express some concern about the adequacy of parking for the building. Exhibit 40.

The sole opposition comes from one neighbor, Susan Grudziecki, who wrote (Exhibit 22) and testified (Tr. 112-124) regarding her concerns about the adequacy of the proposed parking. Ms. Grudziecki testified that parking is very limited on Montgomery Lane. Tr. 118. She feels that there will not be enough parking to accommodate visitors, contractors and delivery people. "[T]hey will park in the driveway and they will block the sidewalks." Tr. 123-124. To buttress her argument, Ms. Grudziecki introduced some photographs of cars parked on Montgomery Lane. The first two photos are shown below (Exhibits 58(a) and (b)):



Looking East from West Lane (Ex. 58(a))



Looking West from Garage Entrance at Edgemoor Building (Ex. 58(b))

There is no parking allowed on Montgomery Lane east of Arlington Road up to the subject site. Just east of the site frontage, there are two parallel spaces on the north side and curbside parking on the south side, amounting to a total of six to seven spaces. There is a two-hour posted time limit on the spaces. No parking is allowed along West Lane. Tr. 104-105.

Applicant met Ms. Grudziecki's concern through the testimony of its land planner, Bill Landfair, who pointed out that not only was Applicant meeting the parking requirements set forth in Zoning Ordinance §59-E-3.7 for a multi-family dwelling ("for each dwelling unit with 3 or more separate bedrooms, 2 spaces"), but also that the site is in the Bethesda CBD Parking District which allows a property owner to pay a fee in lieu of providing any parking spaces. Tr. 76-78.

Mr. Landfair further testified that a County garage is located two blocks away next to the Bethesda Metro, on the northeast corner of the intersection of Woodmont Avenue and Edgemoor Lane. There is also an existing parking garage that has entrances on both Bethesda Avenue and Elm Street, and another County garage under construction now further to the southeast, near Bethesda Avenue and Woodmont Avenue. Tr. 69-70.

Mr. Landfair testified that Ms. Grudziecki's letter (Exhibit 22) was brought to the attention of the Planning Board, but they felt, given the size of this project, its location, and the streets that are serving it, parking and loading would not be an issue in this case. Tr. 91-92. Even if we disregard this hearsay, the record reflects that neither Technical Staff nor the Planning Board expressed any problem with the amount of parking that Applicant proposed to supply. Exhibits 37 and 42.

With regard to use of the street for unloading delivery trucks, Mr. Landfair stated that Zoning Ordinance §59-E-1.4 does not require off-street loading space for a residential project of this size. In his opinion, based the size of the building and the numbers of units proposed, Applicant also has no

obligation under County guidelines to provide any kind of off-street loading space. Exhibit 53(b). Tr. 79-82.

Mr. Landfair observed that Montgomery Lane is wide enough to allow for the temporary loading and unloading of vehicles, as well as larger panel trucks of the type that might be used by delivery companies, without blocking the roadway. West Lane terminates just to the north of the subject property. He feels that West Lane is very serviceable for trash trucks as well as for emergency vehicles in its current configuration. The street will likely be improved in the future, and it has been determined that it is already adequate for emergency vehicles and for trash service. Tr. 86-90.

Craig Hedberg, Applicant's transportation planner, testified that even where parking is prohibited, you are allowed to load and unload with a commercial vehicle or a vehicle designated for that purpose. The adjacent curb would essentially function as a loading zone for commercial-type vehicles.⁶ Tr. 104-105.

When the Hearing Examiner asked Ms. Grudziecki what basis there would be for recommending denial based on parking issues, given the fact that Applicant meets all applicable parking space requirements (*i.e.*, two spaces per unit), she replied, "Well, you can't. . . . I understand your point, but I just felt that the zoning commission should know that this is a major problem on Montgomery Lane." She attributed this problem mostly to lack of parking enforcement. Tr. 123-124.

The Hearing Examiner finds, based on the overwhelming weight of the evidence, that Applicant will meet the requirements for parking spaces in this area, and that the parking and available loading and unloading space will be adequate, considering the streets serving the site.

⁶ Mr. Hedberg introduced page 123 of the 2011 edition of the Maryland version of the Manual on Uniform Traffic Control Devices (MUTCD). Exhibit 57. Footnote 01b on that page provides, "When parking is prohibited, vehicles can still be left at the curb long enough to load or unload either property or passengers. For commercial vehicles, or others appropriately identified, this is generally interpreted to include delivery of property into, or pick-up from, an adjacent building. The designated curb space becomes, in effect, a loading zone." Tr. 108-109.

IV. SUMMARY OF THE HEARING

The hearing in this case took place on September 21, 2012. Applicant called five witnesses – Mimi Kress, Managing Member of the Applicant LLC; Curt Schreffler, a civil engineer; George Myers, an architect; William R. Landfair, a land planner; and Craig Hedberg, a transportation planner. The only opposition testimony was given by neighbor Susan Grudziecki. No other witnesses testified. The record was held open until October 1, 2012, to allow the Applicant the opportunity to file a revised development plan in accordance with the recommendations of the Planning Board.

A. Applicant's Witnesses

1. Mimi Kress (Tr. 11-33):

Mimi Kress, the Managing Member of the Applicant LLC, testified that her occupation is building residential homes. Over the past 30-plus years, she has been involved with development of over 500,000 square feet of light industrial projects and over 500 residential homes in Montgomery County, Northern Virginia and Washington, D.C. Ms. Kress has been involved in new home construction and/or renovations of 25 to 30 homes in the area of the subject site, including the City Homes of Edgemoor. She is also one of the three members of the LLC which owns the subject site.

According to Ms. Kress, Applicant purchased the property with the intent of building a project near a metro station that would be considered a transit-oriented project. The site is walking distance to the Bethesda Metro Station. Applicant's vision for the subject property is a high end project of luxury condominiums, which will fit in well with the other projects in the neighborhood and is desirable within the market. Tr. 14.

The building will be five stories, with the first level being the garage and with four individual units above. Each unit will be approximately 2600 net square feet, and each will have a two car

garage at grade level. There will be an entry lobby on Montgomery Lane and shared elevator access. Tr. 14-15.

Ms. Kress submitted, as part of the application (Exhibit 5(a)), an outline for perpetual maintenance obligations of common areas and quasi-public use space for the 4825 Montgomery Lane Condominium Association. Tr. 19.

Ms. Kress outlined some of Applicant's efforts at outreach to the community. Tr. 19-22. She also addressed Susan Grudziecki's concerns related to visitor parking, mail delivery, package delivery and trash collection. There will be two-car garages in the property for each unit, thereby meeting the required parking parameters. There are also seven public parking spaces on Montgomery Lane, and there is a public parking garage where the Bethesda Metro is located two blocks away, as well as additional parking at the nearby library during the evening hours. Tr. 22-24.

For the trash collection, the residents will keep their trash in the back of their garages. If they use public trash service, they would put the trash out on their driveways, which are now all located on West Lane. Alternatively, a private service would come once or twice a week to pick up the trash directly from that back area. Mail and small deliveries would come into the main lobby. Tr. 23-25.

Montgomery Lane has one lane of traffic heading west from Woodmont Avenue to its intersection with West Lane, and it has two way traffic from that intersection to Arlington Road. Moving trucks could park on either West Lane or Montgomery Lane and unload through the garage entrances. [According to Mr. Hutt, under the state motor vehicle code, a delivery vehicle can temporarily park, the driver can get out, go make a short delivery and get back in, all without being in violation of the no-parking regulations. In this case, it would not obstruct traffic on either West Lane or Montgomery Lane.] Tr. 25-27.

Ms. Kress believes that the final revised development plan meets the requirements of the Planning Board, in that the building has been reoriented so that all garage entrances will be on West

Lane; there will be no curb cut for a driveway entrance on Montgomery Lane; there will be a lobby presence on Montgomery; and all the textual binding elements recommended by the Planning Board will be added to the final Development Plan. She also feels it will be consistent with the Sector Plan and in the public interest. Tr. 28-30.

2. Curt Schreffler (Tr. 34-49; 95-100):

Curt Schreffler testified as an expert in civil engineering. He surveyed the property, including boundary, topographic, tree and utility surveys, and prepared an NRI/FSD (a natural resource inventory and forest stand delineation). That was approved by Park and Planning on March 9, 2011. He also prepared a forest conservation exemption application that was approved on January 31, 2012 in Exhibit 48 (with a condition of mitigating for the one specimen tree that will be removed by this development), and he prepared a stormwater management concept plan, which was approved by DPS on February 3, 2012 (Exhibit 47). Finally, he prepared the development plan for the proposed local map amendment, which is Exhibit No. 35(a). Tr. 36-37.

The storm management concept plan as proposed for this application consists of a green roof to treat and filter storm runoff. It will also have an underground filter structure located in the southeast corner of the site, which will capture additional site runoff, filter it and then discharge it into a public storm drain located about 200 feet down Montgomery. So the Applicant will actually be extending that public storm drain system approximately 200 feet to serve the site. Tr. 37-38.

The development plan calls for a four-unit, five-story condominium building with a front entrance, lobby entrance, facing south or facing Montgomery Lane, and access to four garages, one for each unit, vehicular access off of West Lane. The building will be set back from the West Lane right-of-way line approximately 3.2 feet and it will be set back approximately six feet from the public sidewalk that is proposed along West Lane, thus giving some room between the face of the garage and

the sidewalk, and between the driveways and the property line. There will be eight on-site parking spaces proposed in the four private garages. He also noted that one can request a permit from the Department of Transportation for temporary parking at a meter to permit deliveries. Tr. 39-40.

According to Mr. Schreffler, public utilities are available immediately in front and adjacent to the site, with the exception of the storm drain extension, which Applicant will add to serve the site. Tr. 40. Applicant will be required to obtain a sediment control permit to provide for the control of sediment and erosion during construction. Applicant will be meeting environmental site design standards to maximum extent practicable for this site which is what is required by law, and what's been approved by the concept letter. Tr. 41-42.

Currently, there is a single-family home on the site, a driveway and a detached garage, and the driveway entrance is located in the southeast corner of the site off of Montgomery Lane. As far as environmental features, there is this one 32 inch silver maple that's actually in poor condition, but meets the definition of a specimen tree. The property is not in a special protection area or primary management area, nor are there other environmental issues. Tr. 43-45.

In Mr. Schreffler's opinion, the proposed garage driveway locations will be safe, adequate and efficient, and there will be no adverse impact on the surrounding area from the standpoint of stormwater runoff drainage, stormwater management or sediment control. Moreover, the entire site will be stabilized and landscaped, and new streetscaping and street trees will be added in the public right-of-way. Because the site is so small and already developed, there is no natural vegetation that can be preserved. Tr. 46.

From a civil engineering perspective, Mr. Schreffler believes the development can be built without any adverse impact to the neighborhood or associated public facilities in the neighborhood. Tr. 47.

Mr. Schreffler observed that a trash truck would likely have to remain on one or the other street, as trash trucks do now. There are single family homes on West Lane and the trash trucks don't pull in everybody's driveway. Tr. 48-49.

Mr. Schreffler was recalled to discuss the area to be dedicated on the development plan. He stated that the master plan calls for Montgomery Lane to be a 52-foot right-of-way. It was originally, historically 50 feet. When the property on the other side of the street was developed, they dedicated one foot, which is their share of the extra two feet required. Applicant is proposing to dedicate one foot on its side along Montgomery Lane. West Lane is a 45-foot right-of-way and the master plan does not speak to that right-of-way width at all. Applicant is indicating a two and a half foot proposed dedication, but the exact final width of West Lane and that dedication hasn't been determined yet and will be determined during the subdivision site plan process.

[The Development Plan site layout is graphically showing one foot of dedication along Montgomery Lane and two and a half feet on West Lane, but the text box on the site layout confusingly referred to 308 square feet, with one foot of dedication.⁷ Since the actual amount of dedication required will be determined at Site Plan and subdivision, it was agreed that the textual binding elements, one of which requires the dedication on both streets, would be added to the Development Plan, and the specific reference to the amount of dedication would be removed from the text box on the development plan's site layout.⁸] Tr. 95-100.

3. George Myers (Tr. 50-60):

George Myers testified as an expert in architecture. He and his firm were the primary

⁷ The number 308 square feet of proposed dedication is derived from multiplying 70 feet of frontage along Montgomery Lane by 1 foot and multiplying 95 feet of frontage on West Lane by 2½ feet, and adding the products.

⁸ There is still a reference to the 308 square feet of dedication Applicant is proposing in the "Site/Zoning Data" Table on the final Development Plan (Exhibit 60(a)), but this is only a proposal, and the Planning Board will have flexibility in determining the exact amount of dedication required.

designers of the proposed building. They prepared the first floor and roof plan, building elevations, and site plan section drawings that have been submitted as part of this rezoning application. His firm was engaged to determine what was the best use for the site in terms of what type of building. He explored a townhouse concept because in that area there were townhouses as well as apartment buildings, and concluded, after going through several schemes, that this was the best type of building under the TS-R zone. It conforms to the TS-R zone with a 2.5 FAR. The design of the building itself was mainly dictated by the first floor. His effort was to get four units and four garages on West Lane, with the building entrance on Montgomery Lane. There is also a requirement in the TS-R zone for a private recreation area of 20 percent, which has been achieved at 23 percent. The public area is 10 percent. The upper floors will have four three-bedroom units, and the building will be 65 feet high. Tr. 52-53.

The building was designed with the primary rooms, meaning bedrooms, kitchen, living and dining, facing Montgomery and West Lanes so that the front elevations would have “lots of glazing” and would look good since they are facing the public view. The stairs and elevators are located on the two back sides (north and east). Exhibit 50 portrays two three dimensional renderings of the proposed buildings. The building is designed primarily in a more traditional, residential style because that's typical of the neighborhood. It will have double-hung windows; a porch on the corner; and covered porches, which is a very residential feature, typical of a lot of older, smaller apartment buildings. The building will be articulated with a base and a middle and a top, which is a traditional way of detailing a residential building. Tr. 54-56.

In Mr. Myers' opinion, the building will fit well in the neighborhood and will be compatible in terms of scale and massing with the adjoining Edgemoor, which is taller at 10 stories, and the City Home Townhouses, across Montgomery Lane, which is one story shorter. Tr. 56-57.

Mr. Myers further testified that the building will have a large enough trash room with a container on wheels and a trash chute. The trash room will be at the north end of the building. Tr. 57-59.

Mr. Myers opined that the building will conform with the TS-R development standards, and in terms of the scale, height, massing and the general description of the project, it will be a benefit to the coordinated, harmonious and systematic development of the area within this TS-R Zone. He also feels that it will not have any detrimental effect to the use or development of adjacent properties or the surrounding neighborhood. Mr. Myers stated "I believe it'll be very compatible [with the surrounding area]. It's designed with that intent." Tr. 59-60. At 65 feet, it will also be in compliance with the recommended height limitation on sector plan.

According to Mr. Myers, from an architectural perspective, the design and layout will provide for the maximum safety, convenience and amenity of the residents of the proposed development, and the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate and efficient. He also believes that the project would assist in the coordinated and systematic development of the county as a whole and this transit station district in particular. Tr. 60.

4. William Landfair (Tr. 61-95)):

William Landfair testified as an expert in land use planning. He prepared the land use and zoning analysis report dated January 16, 2012, which is Exhibit 23(b).

Mr. Landfair introduced a Surrounding Area map (Exhibits 52 and 52(a)). He noted that the purpose of defining the surrounding area is so that one can better determine the compatibility of the project with that area, and also make the findings that are required for approval of the rezoning, including the specific findings related to consistency with the sector plan as well as in this case, the TS-R zone standards. Tr. 65-66.

Mr. Landfair defined the boundary to the north as being that of Edgemoor Lane; to the east, Woodmont Avenue; to the south, Elm Street; and to the west, Arlington Road. This is very similar to how Staff defined the surrounding area with the exception that they further extended the boundary north to Moreland Lane by one block. Staff's boundary coincides with the TS-R district as described more fully in the Sector Plan. Mr. Landfair feels that, given the overall size and density, massing, scope of this particular project, the surrounding area did not need to extend north beyond than Edgemoor Lane, but he concluded that whether Staff's definition or his were used would not make a difference in his evaluation. Tr. 66-67.

According to Mr. Landfair, the Sector Plan talks about planning and design objectives. These include promoting variety and choice in housing. They talk about providing a sufficient supply of housing to serve Bethesda's existing and planned employment. Applicant's project is located within a thousand feet of the Bethesda Metro Station, near the heart of the central business district employment center. It is convenient for residents who will work with the CBD as well as those that might want to rely on public transportation. It is part of the CBD Master Plan, but it is not technically within the CBD itself. Other recommendations related to planning and design include promoting infill development, providing for a step down in building heights from the Bethesda Metro Center to the west, and allowing for a diversity of architectural styles that will achieve a good building proportion, reducing the sense of bulk. Tr. 67-68.

Referring to the surrounding area exhibit, Mr. Landfair noted that the subject property is located in the center of the surrounding area in the northeast corner of West Lane and Montgomery Lane. The proposed building is 65 feet in height, stepping down from the Edgemoor building located immediately to the east, which is a 10-story building. Other nearby developments include the City Homes Townhomes, which are located perpendicular to Montgomery Lane to the south. These are approximately 50 feet in height. Further to the west across West Lane is a single family home which

is currently used for commercial purposes. However, that property is the subject of a recently submitted rezoning application, which includes also three adjacent lots along West Lane. And as shown on the development plan for that rezoning application, the building that is proposed as part of that application, is 70 feet in height. Thus, the building that Applicant is proposing is very similar to what is immediately adjacent to it or steps down as is recommended by the sector plan. Tr. 68-69.

Mr. Landfair testified that a county garage is located two blocks away next to the Bethesda Metro, on the northeast corner of the intersection of Woodmont Avenue and Edgemoor Lane. There is an existing parking garage that has entrances on both Bethesda Avenue and Elm Street, and another county garage under construction now further to the southeast, near Bethesda Avenue and Woodmont Avenue. Mr. Landfair also pointed out that the site is located within the parking district for Bethesda. Tr. 69-70.

Mr. Landfair opined that the design and scale of the proposed building has been very carefully worked out to be consistent and to be compatible with not only adjoining properties, but also with the sector plan in terms of architectural style, height, massing and setbacks. Sector Plan planning and design recommendations for the transit station residential district include the provision of high density and moderate density housing with a minimum of 45 dwelling units per acre. Many of the developments in the surrounding area that have been built within the TS-R zone do not provide that density. For example, the City Homes development to the south on Montgomery Lane, I believe, is on the order of something like 26 to 27 units to the acre. Applicant will be providing a density of 28 units to the acre, but on balance given the size of the property, the goals and the requirements of the zone and the need for architectural compatibility, he feels that Applicant will be providing a density which is appropriate for this site and for this area. At an FAR of 2.4, it will also be consistent with the maximum FAR density of 2.5 recommended for the TS-R zone. Tr. 71-72.

Mr. Landfair noted that Applicant will be providing 10.6 percent of the site for public use space. This will include enhanced streetscape along both West Lane and Montgomery Lane. A sidewalk for West Lane will be provided as part of this project. In terms of active and passive recreational space for the residents and for guests, there are two private courtyard areas as well as individual balconies that will be provided. Tr. 72.

The entrance off of a centralized lobby will be directly accessible to the street, so it will help to activate the streetscape. The sector plan talks about good relationships to the street with a continuous building line. The proposed setbacks from both West Lane and Montgomery Lane are fairly minimal, which helps to create a continuous building line along both streets, helping to frame the streets, which is consistent with the recommendation of the plan. There will also be street trees, special pavers and lighting. Tr. 72-73.

Mr. Landfair further testified that the intent of the TS-R Zone, as is described in the zoning ordinance, is that it be used in transit station development areas and that it also be used in areas adjacent to central business districts, and located within 1500 feet of a metro station. Applicant's property is located approximately a thousand feet from the entrance of the Bethesda Metro Station. The sector plan specifically recommends the subject property for the TS-R Zone. The TS-R zone is intended for locations where multi-family residential development either already exists or where such development is recommended in the sector plan. Surrounding properties are already developed with this type of use, and this project will be compatible with and consistent with those uses up and down the street. The sector plan talks about encouraging innovative design and flexibility of design, particularly when it comes to the height, the bulk, the arrangement of the buildings, and their locations. And he feels that Applicant's design will meet that particular standard. The site is also within easy walking distance to Metro, to the central business district and nearby shops. Tr. 73-74.

Mr. Landfair noted that MPDUs are not required given the fact that the building will have only four units. He stated that the site qualifies for the minimum area based on the recently approved zoning text amendment. In his opinion, not only is the project in compliance with the zoning requirements, but it is also consistent with the sector plan recommendation for stepping down. Tr. 75-76.

In terms of parking, the project satisfies the parking requirement in Zoning Ordinance §59-E, which calls for two spaces per unit. Applicant will be providing a total of eight spaces for the project. Also, because the site is in the Bethesda parking lot district, property owners would have an option, if they see fit, to contribute to an annual tax, payable to the county, and that would reduce their parking space requirement to zero. Many property owners and developers find, however, that it is not prudent, and Applicant will be meeting the usual minimum standards, which are two spaces per unit. Tr. 76-78.

Mr. Landfair further testified that for a residential project of this size, no off-street loading space is required, per Zoning Ordinance §59-E-1.4. Exhibit 53(a). In this case, based on the size of the building and the numbers of units proposed, Applicant also has no obligation under county guidelines to provide any kind of off street loading space. Exhibit 53(b). Tr. 79-82. Mr. Landfair does not believe the parking spaces on Montgomery Lane are metered. Tr. 82-83.

Mr. Landfair opined that the proposed development is in the public interest because it conforms to all of the recommendations and standards found in the sector plan, and its location is particularly close to the CBD, the metro station and other public facilities. He also stated that Bruce Crispell, the senior demographer for the county schools, found adequate capacity for the Bethesda/Chevy Chase cluster, with the payment of a school facility fee by Applicant. Tr. 83-84.

In Mr. Landfair's opinion, this application satisfies the findings required of the Council by Zoning Ordinance §59-D-1.6. It would also provide for the maximum safety, convenience and

amenity of the residents of the development and would be compatible with adjacent developments. Tr. 84-85.

Mr. Landfair observed that both streets function well today even though West Lane is not improved to the standard that Montgomery Lane is. It is wide enough to allow for the temporary loading and unloading of vehicles, as well as larger panel trucks of the type that might be used by delivery companies, without blocking the roadway. West Lane terminates just to the north of the subject property. He feels that West Lane is very serviceable for trash trucks as well as for emergency vehicles in its current configuration. There is a pending rezoning application for the property in the northwest corner of West Lane and Montgomery Lane, which calls for widening the pavement width of West Lane to 22 feet from its current pavement width, which is something on the order of 18 to 20 feet. So the street will be improved in the future in all likelihood, and today it already has been determined that it is already adequate for emergency vehicles and for trash service. Mr. Landfair also observed that there is little pedestrian traffic on West Lane. Moreover, if delivery vehicles temporarily parked on Montgomery Lane in front of the main entrance to the building, that would not interfere with the ability of cars coming from Woodmont Avenue going towards Arlington Road to continue in that direction. Tr. 86-90.

Mr. Landfair further testified that the site is fairly close to both police stations and fire stations. The police station is on the other side of Old Georgetown Road, just four blocks from the subject property. The nearest fire station is roughly similar distance. Tr. 90.

Mr. Landfair noted that Ms. Grudziecki's letter (Exhibit 22) was brought to the attention of the Planning Board. While parking is a legitimate concern in this area, Technical Staff and the Planning Board felt that, given the size of this project, given its location, and given the streets that are serving it, that it would not be an issue in this particular instance. They felt, on balance, that Applicant will be

providing the parking standard, and that loading can be accommodated based on the streets that are serving the property. Tr. 91-92.

5. Craig Hedberg (100-112):

Craig Hedberg testified as an expert in transportation planning. He described Montgomery Lane as one lane westbound between Woodmont Avenue and West Lane, and two lanes of traffic (eastbound and westbound) between West Lane and Arlington Road. You cannot exit West Lane and then legally go eastbound on Montgomery Lane. There is no parking allowed on Montgomery Lane east of Arlington Road up to the subject site. Just east of the site frontage, there are two parallel spaces on the north side and curbside parking on the south side, amounting to a total of six to seven spaces. There is a two-hour posted time limit on the spaces. No parking is allowed along West Lane, but Mr. Hedberg testified that even where parking is prohibited, you are allowed to load and unload with a commercial vehicle or a vehicle designated for that purpose. So essentially it would function as a loading zone for commercial type vehicles.⁹ Tr. 104-105.

Mr. Hedberg prepared a transportation statement which summarizes the net projected peak hour trips. Exhibit 18. There is an existing one-single family unit on site which would be replaced by these four condominium units. The trip generation comparison indicates that there would be one additional peak hour trip beyond what is currently generated by the single unit on the site. So that is well within that 29 trip criteria below which you do not have to do a full traffic study [under LATR regulations]. And furthermore, it's less than three peak hour trips, so therefore, there would be no policy area mobility review (PAMR) requirement as well. Tr. 106-107.

⁹ Mr. Hedberg introduced page 123 of the 2011 edition of the Maryland version of the Manual on Uniform Traffic Control Devices (MUTCD). Exhibit 57. Footnote 01b on that page provides, "When parking is prohibited, vehicles can still be left at the curb long enough to load or unload either property or passengers. For commercial vehicles, or others appropriately identified, this is generally interpreted to include delivery of property into, or pick-up from, an adjacent building. The designated curb space becomes, in effect, a loading zone." Tr. 108-109.

In Mr. Hedberg's professional opinion as a transportation planner, the proposed rezoning will not adversely impact the surrounding area from the standpoint of traffic and traffic conditions. These are very low volume streets because West Lane itself is a cul-de-sac. With only westbound traffic allowed on Montgomery Lane up to West Lane, there is not going to be traffic heading towards the CBD on Montgomery Lane. Mr. Hedberg also opined that the transportation related public facilities are adequate to accommodate this rezoning application. "They'll virtually be an imperceptible impact on the traffic situation in conjunction with this redevelopment." Tr. 107-108. He further opined that the proposed pedestrian sidewalks and vehicular points of access to the garages will be safe, adequate and efficient, and the rezoning will be in the public interest, as it is in conformance with the sector plan for the area. Tr. 108.

Mr. Hedberg further testified that he concurred with the findings in the Technical Staff report, which are the same as those documented in his own transportation statement of August 2, 2011 (Exhibit 18). Tr. 109-110.

B. Opposition Witness

Susan Grudziecki (Tr. 112-124):

Susan Grudziecki testified that she lives at 4821 Montgomery Lane in Bethesda, directly next door to the building that is to be constructed (*i.e.*, in the Edgemoor, immediately to the east of the subject site). She introduced photographs (Exhibit 58) on Montgomery Lane in the area of the subject site, stating that she took them on a "normal" day on that street. They depict vehicles allegedly illegally parked on the street near the subject site, within a span of two weeks.

Ms. Grudziecki further testified that parking is very limited on Montgomery Lane, and that "apartments and condos that are 2600 square feet in size will have cleaning ladies, or cleaning services. They will have children who are visiting. They will, and this is strictly from a practical

standpoint. They will have deliveries of built-ins or decorators, because who can afford a 2600 square foot apartment in Bethesda will have lots of visitors. And there is no place to accommodate them.”

Tr. 118.

Essentially, Ms. Grudziecki’s concern is that there will be no room for legal parking by visitors, and the like. “[T]hey will park in the driveway and they will block the sidewalks.” Tr. 123. When asked by the Hearing Examiner what basis he would have for recommending denial based on parking issues, given the fact Applicant meets all applicable parking space requirements (*i.e.*, two spaces per unit), Ms. Grudziecki replied, “Well, you can’t. But I just, I understand your point, but I just felt that the zoning commission should know that this is a major problem on Montgomery Lane.” She attributed this problem mostly to lack of parking enforcement. Tr. 123-124.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Zoning involves two basic types of classifications: Euclidean zones and floating zones. The term “Euclidean” zoning arose from the seminal United States Supreme Court case upholding the land use authority of local governments, *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). Euclidean zoning divides the territory of a local jurisdiction into zoning districts with set boundaries and specific regulations governing aspects of land development such as permitted uses, lot sizes, setbacks, and building height.

A floating zone is a more flexible device that allows a legislative body to establish a district for a particular category of land use, with regulations specific to that use, without attaching that district to particular pieces of property. Individual property owners may seek to have property reclassified to a floating zone by demonstrating that the proposed location is appropriate for the zone, *i.e.*, it satisfies the purpose and regulations of the zone, the development would be compatible with the surrounding area, and it would serve the public interest.

The TS-R Zone is among the floating zones that provide for design specifications as part of a development plan. An applicant is afforded considerable design flexibility if development standards for the zone are satisfied. In exchange for that flexibility, development under the TS-R Zone is permitted only in accordance with a development plan that is approved by the District Council when the property is reclassified to the TS-R Zone. See Code §59-D-1.11. If approved, the development plan will provide basic design parameters for the site, much as the Zoning Ordinance provides design specifications for more rigidly applied zones. Normally, a development plan is expected to contain sufficient precision to fix the land use, height, density and bulk of the proposed development, which are basic components of compatibility, and to provide design specifications that govern post-zoning reviews.

A. Standards for Council Review

Section 59-D-1.61 of the Zoning Ordinance requires the District Council, before it approves any application for reclassification to the TS-R Zone, to consider whether the application, including the development plan, fulfils the “purposes and requirements” set forth in Code Section 59-C for the new zone. In making this determination, the law expressly requires the District Council to make five specific findings, “in addition to any other findings which may be necessary and appropriate to the evaluation of the proposed reclassification.” Therefore, these findings are an essential part of the Hearing Examiner’s Report and Recommendation. They relate to consistency with the Master Plan and other County policies, compliance with the requirements of the zone, compatibility with surrounding development, circulation and access, preservation of natural features, and perpetual maintenance of common areas.

The five specific findings required by §59-D-1.61 of the Zoning Ordinance are:

- (a) [That t]he zone applied for substantially complies with the use and density indicated by the master plan or sector plan, and does not*

*conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. . . .*¹⁰

(b) That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

(c) That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

(d) That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

(e) That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

Because the general requirement of the law – that the application must fulfill the “purposes and requirements” of the new zone – is subsumed in the language of the five specific required findings (especially in subsection (b)), a determination that the five findings have been satisfied would satisfy the Montgomery County Zoning Ordinance. However, in addition to these five findings, Maryland law also requires that the proposed rezoning be in the public interest. As stated in Maryland LAND USE Article, Code Ann. § 21-101(a)(4)(i) (2012),¹¹

(i) planning, zoning, or subdivision control powers in the regional district [must be exercised to:]

¹⁰ The remainder of this section concerns procedures utilized when an Applicant seeks to exceed the height or density recommended in the Sector Plan in order to allow the inclusion of MPDUs or workforce housing on site. There will be no MPDUs or workforce housing located on this site because of the small number of planned dwelling units, and neither the height nor the density will exceed Sector Plan recommendations.

¹¹ Effective October 1, 2012, the Regional District Act, Article 28, Md. Code Ann., was re-codified, without a change in substance, into a new “Land Use Article.” Section § 21-101(a)(4)(i) of the Land Use Article contains the rough equivalent of the previous language in Article 28, Md. Code Ann., § 7-110.

(1) guide and accomplish a coordinated, comprehensive, adjusted, and systematic development of the regional district;

(2) coordinate and adjust the development of the regional district with public and private development of other parts of the State and of the District of Columbia; and

(3) protect and promote the public health, safety, and welfare.

In sum, there are six findings required (§59-D-1.61(a) through (e) and the public interest). The “Required Findings” in the next part of this report are organized in the order set forth in the statute to facilitate review.

B. Required Findings

1. County Plans and Policies

The first required finding is that:

The zone applied for substantially complies with the use and density indicated by the master plan or sector plan, and does not conflict with the general plan, the county capital improvements program, or other applicable county plans and policies. . . .

a. The Applicable Master Plan or Sector Plan

The subject site is located within the area governed by the Bethesda CBD Sector Plan, approved and adopted in 1994. For the reasons discussed in Part III.D.3 of this report (pp. 20-21), the Hearing Examiner finds that the proposed development substantially complies with the use and density requirements of the Sector Plan, as well as its goals and objectives.

b. The General Plan and the County Capital Improvements Program

The General Plan encourages housing plans that foster transit serviceability and proximity of housing to transit. This Application would place housing units about two blocks from a Metro Station. Tr. 22-24. As stated by Technical Staff, “. . . development of this site in close proximity to the Metro station supports the county’s smart growth policies of creating housing within walking distance of Metrorail stations and offering future residents alternative transportation modes to the private

automobile.” Exhibit 37, p. 25. Of course, the General Plan is also reflected in the applicable Sector Plan, which was discussed above.

The Development Plan specifies that “This project is not related to any County Capital Improvement Program (CIP).” Exhibit 60(a). The Hearing Examiner finds, based on all the evidence, that the proposed development is consistent with the General Plan and does not impact the County’s Capital Improvements Program.

c. Other County Policies (Growth Policy and Adequate Public Facilities Ordinance)

Under the County’s Adequate Public Facilities Ordinance (“APFO,” Code §50-35(k)), the Planning Board has the responsibility, when it reviews a preliminary plan of subdivision, to assess whether the following public facilities will be adequate to support a proposed development: transportation, schools, water and sewage facilities, and police, fire and health services. The Planning Board’s application of the APFO is limited by parameters that the County Council sets in its Growth Policy.¹² While the ultimate test under the APFO is carried out at subdivision review, evidence concerning adequacy of public facilities is relevant to the District Council’s determination in a rezoning case as to whether the reclassification would serve the public interest.

The Planning Board considers the programmed services to be adequate for facilities such as police stations, firehouses, and health clinics unless there is evidence that a local area problem will be generated. There is no such evidence in this case. On the contrary, the evidence is that both police and fire stations are nearby. Tr. 90 and Exhibit 37, p. 14. The remaining three public facilities – transportation, schools and water and sewer service – were discussed at length in Part III.D.4 of this report (pp. 21-25). For the reasons stated therein, the Hearing Examiner finds that Applicant has sufficiently demonstrated the adequacy of public facilities at the rezoning stage.

¹² In 2010, the County Council changed the name of the Growth Policy to the Subdivision Staging Policy, but both Zoning Ordinance §59-H- 2.4(f) and APFO Code §50-35(k)) still refer to the Council’s Growth Policy.

In sum, based on this record, the Hearing Examiner finds that the requested rezoning does not conflict with “other applicable County plans and policies.”

2. Zone Requirements, Safety, Convenience and Amenity of Residents and Compatibility with Adjacent Development

The second required finding is:

That the proposed development would comply with the purposes, standards, and regulations of the zone as set forth in article 59-C, would provide for the maximum safety, convenience, and amenity of the residents of the development and would be compatible with adjacent development.

a. Compliance with Zone Purposes, Standards and Regulations

The requirements for the TS-R Zone are found in Code §59-C-8. The TS-R Zone is a “floating zone,” intended generally to be used in Transit Station Development Areas. Section 59-C-8.21(b) specifies that the TS-R Zone is intended for locations where multiple-family residential development already exists or where such development is recommended by an approved and adopted master. As discussed in Part III of this report, that is the case here.

Section 59-C-8.21(d) provides:

In order to facilitate and encourage innovative and creative design and the development of the most compatible and desirable pattern of land uses, some of the specific restrictions which regulate, in some other zoning categories, the height, bulk and arrangement of buildings and the location of the various land uses are eliminated and the requirement substituted that all development be in accordance with a plan of development meeting the requirements of this division.

Applicant’s development plan is discussed at length in Parts III.D.1 and 2 of this report (pp. 11-19).

The Hearing Examiner finds the development plan to be consistent with the requirements of the Zoning Ordinance.

The purposes of the TS-R Zone are set forth in Code §59-C-8.22:

(a) *To promote the effective use of the transit station development areas and access thereto;*

(b) *To provide residential uses and certain compatible non-residential uses within walking distance of the transit stations;*

(c) *To provide a range of densities that will afford planning choices to match the diverse characteristics of the several transit station development areas within the county; and*

(d) *To provide the maximum amount of freedom possible in the design of buildings and their grouping and layout within the areas classified in this zone; to stimulate the coordinated, harmonious and systematic development of the area within the zone, the area surrounding the zone and the regional district as a whole; to prevent detrimental effects to the use or development of adjacent properties or the surrounding neighborhood; to provide housing for persons of all economic levels; and to promote the health, safety, morals and welfare of the present and future inhabitants of the regional district and the county as a whole.*

Applicant's land use planner, William Landfair, testified that the proposed rezoning and the development plan conform to the purposes of the TS-R zone, as specified in the Zoning Ordinance. Tr. 75-76.

Technical Staff concluded (Exhibit 37, pp. 21-22) that the application satisfies the intent and purposes of the TS-R zone for the following reasons:

The application, as submitted, promotes the effective use of the Bethesda Metrorail Station by adding new residential uses within walking distance of this station. As shown on the Development Plan, this project proposes a residential density of 27 units per acre thereby offering choices to match the diverse characteristics of housing found within the Bethesda CBD. The density for the subject site, (27 du/ac) is within the range of 24 to 36 dwellings per acres approved for other low rise residential uses developed in the surrounding area. The building when constructed will conform to the Sector plan recommendations of 65 foot building height. Other nearby low-rise residential uses developed under the TS-R zone have comparable heights. The proposed building has been designed to incorporate the flexible setbacks of the TS-R zone. With a building placed closer to the street, the creation of new public use space along Montgomery Lane, and a proposed building height comparable to the surrounding existing and proposed residential developments, this project provides a coordinated, harmonious and systematic development of this area as envisioned by the sector plan

Based on the ample evidence in the record, the Hearing Examiner finds, as did Technical Staff and the Planning Board, that the proposed development satisfies the purposes of the TS-R Zone.

Zoning Ordinance §59-C-8.24 provides that the TS-R Zone is “permitted only in a Transit Station Development Area defined in section 59-A-2.1 and in accordance with an approved and adopted master plan or sector plan [with exceptions not relevant here].” The subject site is within a Transit Station Development Area as defined in Section 59-A-2.1 and is in accord with the Sector Plan.

Zoning Ordinance §59-C-8.25 requires that a proposed development in the TS-R Zone conform to “the facilities and amenities” of the Sector Plan, include any required easements, provide for safe and efficient circulation and adequate open and recreation space, and insure compatibility with the surrounding area, as well as the ability of the area to accommodate the intended use. The requirements mentioned in this provision are duplicated by the specific findings required of the Council, and they will be discussed below in the sections of this report addressing those findings.

Zoning Ordinance §59-C-8.3 specifies the uses permitted in the TS-R Zone. The use proposed for this project (multi-family residential) is permitted in the TS-R Zone.

The remaining requirements of the TS-R Zone are spelled out in Code Section 59-C-8.4, which prescribes development standards. Those standards are set forth below in a chart from page 8 of the Technical Staff report (Exhibit 37), juxtaposed against what Applicant will be providing (Footnote references within the Table are to Technical Staff’s footnotes, reproduced in italics below the Table):

Proposed Zoning: TS-R	Required	Recommended Sector Plan	Proposed
Minimum area §59-C-8.41	18,000 sq ft [except as allowed per ZTA 12-8] ¹	18,000 sq ft	6,217 sq ft
Max. Building Height §59-C-8.5	No height limit	65 feet ²	65 ft to roof line
FAR §59-C-8.42	2.5 ³ (15,542.5 sf.)	2.5	2.5 (15,519 sf.)
Building Setback from Street R-O-W	0 ft	25 ft ⁴	12ft (Montgomery Lane) 19ft (West Lane)

Setback from other lot lines	0 feet side 0 feet rear	NA	5.0 feet side 13.3 feet rear
Min. Open Space §59-C-8.43	30% (1,865 sf.)		33.6% (2,086 sf.)
(a) Min. Public Use Space	10% (622 sf) ⁵	N A	10.6% (659 sf)
(b) Min. Recreational Space Active/Passive	20% (1,244 sf) ⁵	NA	23 % (1,427 sf)
Parking §59-E	8 spaces (2 spaces/unit)	NA	8 spaces
MPDUs	NA (<20 total units)	NA	None

¹ Gross site area: 6,525 sq ft; (per record plat); proposed dedication shown on submitted development plan yields a net tract area of 6,217 sq ft... [Per ZTA 12-08,] Parcels smaller than 18,000 sq ft are permitted to be reclassified to the TS-R zone if recommended in the applicable master or sector plan per Section 59-C-8.41 of the Zoning Ordinance, and are located adjacent to or confronting another parcel either classified in or under application for the TSR-Zone.

² Per Section 59-C.8.51 of the Zoning Ordinance the TSR Zone does not specify a maximum building height, but states that the building height shall be determined in the process of site plan review. The Bethesda CBD Sector Plan recommends a height of 65 feet for properties in this area.

³ The Floor Area Ratio (FAR) is calculated on the gross site area of 6,525 sq ft.

⁴ Building setback is discussed on page 16 of this staff report under Urban Design Guideline 4.

⁵ Public use space and active and passive recreational space requirements may be met by providing the required space as a percentage of the net area included in the development plan

As is evident from the chart, Applicant has met all the applicable development standards.¹³

Based on this record, the Hearing Examiner finds that Applicant's development plans are in accordance with all of the purposes, standards and regulations of the TS-R Zone, as set forth in Article 59-C of the Zoning Ordinance.

¹³ This application initially did not meet the area standards for the TS-R Zone. Technical Staff explains how a zoning text amendment (ZTA 12-08) changed these requirements (Exhibit 37, p. 2):

Subsequently, the County Council approved Zoning Text Amendment (ZTA) 12-08 and it became effective on July 30, 2012. This ZTA allows a smaller parcel (less than 18,000 square feet) to be approved for either the TS-R or TS-M Zone if the parcel is designated in an approved and adopted master or sector plan and located adjacent to or confronting another parcel either classified in or under application for either zone. The subject property is located adjacent to property along its northern property line that is recommended for the TS-R Zone in the Bethesda CBD Sector Plan. It is also located adjacent to property along its eastern property line that is classified in the TS- R Zone. The confronting property to the south and across Montgomery Lane is also classified in the TS-R Zone. The subject application now meets the requirements for the TS-R Zone for a minimum lot area of less than 18,000 square feet. A copy of ZTA 12-08 is included as Attachment A [to the Staff Report]. . . .

b. Safety, Convenience and Amenity of Residents

The next part of “Finding (b)” required by Section 59-D-1.61 is a determination that the proposed development would provide the “maximum safety, convenience, and amenity of the residents.” In Mr. Landfair’s opinion, this application satisfies the findings required of the Council in Zoning Ordinance §59-D-1.6, and would provide for the maximum safety, convenience and amenity of the residents of the development. Tr. 84-85.

Technical Staff agreed (Exhibit 37, pp. 25-26),

. . . This proposal provides open space amenities to residents of the development. The site’s location within the Bethesda CBD offers the convenience of CBD shopping choices and transportation choices via the Bethesda Metrorail station to future residents. This proposal has been designed for the maximum safety of the future residents.

This issue has also been discussed above in conjunction with the requirements for the TS-R Zone and in Part III. D. of this report. The Hearing Examiner finds that Applicant has provided the maximum in safety, convenience and amenities for the future residents of this development.

c. Compatibility with Adjacent Development

The final required determination under “Finding (b)” is that the proposed development be compatible with adjacent development. The issue of compatibility was discussed in Parts III.D.1, 2 and 3 of this report in connection with the Applicant’s “vision” for the development, the Development Plan and Sector Plan compliance. Applicant’s land planner, Bill Landfair, opined that the proposed building would be compatible with adjacent developments (Tr. 84-85), and Technical Staff observed that “. . . the proposed building will be compatible with the existing and approved adjacent development in terms of height and use.” Exhibit 37, p. 25. There is no contrary evidence in the record.

For all these reasons, the Hearing Examiner finds Applicant’s Development Plan to be compatible with adjacent development.

3. Internal Vehicular and Pedestrian Circulation Systems and Site Access

The third required finding is:

That the proposed internal vehicular and pedestrian circulation systems and points of external access are safe, adequate, and efficient.

Technical Staff found that the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate, and efficient (Exhibit 37, p. 26):

The submitted development plan proposes pedestrian circulation along the site's property lines. Public sidewalks along the Montgomery Lane and West Lane will provide access that is efficient and adequate for internal and external pedestrian movement patterns of future residents. Internal access is provided by a walkway along the site's eastern and northern property lines. This walkway will offer future residents safe, adequate and efficient means to move around the property. The existing public sidewalk along Montgomery Lane will be upgraded to align with the existing sidewalk in front of the 10-story multi-family building to the east. Currently, there is no sidewalk along West Lane. The development plan proposes a sidewalk in this location to supply a missing link in the existing pedestrian circulation system and increase pedestrian safety in this location.

The vehicular access points along West Lane have been designed to minimize pedestrian and vehicular conflicts by clearly delineating each unit's driveway (access point) from the proposed sidewalk. This delineation will include a different paving material for the sidewalk to highlight pedestrian movements in this location. As proposed, the internal vehicular and pedestrian circulation systems are adequate and promote safe and efficient movements for pedestrians and vehicles using this site.

This issue was discussed in Parts III.D.4 of this report (pp. 21-23). As noted there, Applicant's transportation planner, Craig Hedberg, testified that the proposed pedestrian sidewalks and vehicular points of access to the garages will be safe, adequate and efficient. Tr. 108. Applicant's architect, George Myers, also testified that the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate and efficient. Tr. 60. There is no evidence to the contrary, and the Hearing Examiner finds that the proposed internal vehicular and pedestrian circulation systems and points of external access will be safe, adequate and efficient for both vehicular and pedestrian traffic.

4. Preventing Erosion, Preserving Vegetation, Forest Conservation and Water Resources

The fourth required finding is:

That by its design, by minimizing grading and by other means, the proposed development would tend to prevent erosion of the soil and to preserve natural vegetation and other natural features of the site. Any applicable requirements for forest conservation under Chapter 22A and for water resource protection under Chapter 19 also must be satisfied. The district council may require more detailed findings on these matters by the planning board at the time of site plan approval as provided in division 59-D-3.

As discussed in Part III.D.5 of this report (pp. 25-26), the site is not located in a Special Protection Area or Primary Management Area, and does not contain any forest, streams, steep slopes, buffers or flood plains. Applicant's engineer, Curt Schreffler, testified that there is one 32-inch, silver maple tree currently on the site. It meets the definition of a specimen tree, but it is in poor condition. There are no other environmental issues. Tr. 43-45. In Mr. Schreffler's opinion, there will be no adverse impact on the surrounding area from the standpoint of stormwater runoff drainage, stormwater management or sediment control. A stormwater management concept plan has been approved by the Department of Permitting Services for this site (Exhibit 47), and stormwater management will be reviewed at subdivision. Moreover, the entire site will be stabilized and landscaped, and new streetscaping and street trees will be added in the public right-of-way. Because the site is so small and already developed, there is no natural vegetation that can be preserved. Tr. 46.

Technical Staff confirms in its report that "The site does not contain any environmentally sensitive features as defined by the Planning Board's Approved Environmental Guidelines (2000)." Exhibit 37, p. 20. Staff also noted that the property is exempt from the forest conservation requirements due to its small size, but at the time of future approvals, a tree save plan will be needed to specify mitigation measures for the removal of the maple tree and to address any construction impacts to nearby offsite trees. Exhibit 37, p. 26.

For the reasons discussed here and in Part III.D.5 of this report, the Hearing Examiner finds that Applicant has demonstrated the environmental controls required by “Finding (d).”

5. Ownership and Perpetual Maintenance

The fifth required finding is:

That any documents showing the ownership and method of assuring perpetual maintenance of any areas intended to be used for recreational or other common or quasi-public purposes are adequate and sufficient.

Applicant, 4825 Montgomery Lane, LLC, is the owner of the subject site.¹⁴ It has submitted an “Outline for the Perpetual Maintenance Obligations of Common Area and Quasi-Public Use Space for the 4825 Montgomery Lane Condominium Association.” Exhibit 5(a). That document provides:

Introduction

4825 Montgomery Lane will be a transit oriented residential development located in the Bethesda Central Business District Planning Area. A condominium association (the “Association”) comprised of the various owners of the residential condominium units will be created to provide the supplementary services needed in an urban mixed-use environment for the perpetual maintenance obligations of the common areas and quasi-public use spaces that are common to the entire project. These obligations will include cleaning, maintenance, insurance, and occasional activities programming. An assessment from each unit owner will provide funding for the Association and a Board of Directors will create and manage the activities. This outline is intended to serve as a guide for certain terms to be included in the Association documents or covenants, conditions and restrictions type documents.

Goals

- Create an attractive environment through landscaping, decorating, and amenities.
- Provide cleaning, snow removal, and maintenance of common areas, quasi-public areas and recreational facilities to preserve the neighborhood’s public spaces.
- Program certain resident events that will create an inclusive and vibrant community.

Programs

- Provide cleaning and maintenance of public use space and common areas.
- Coordinate landscaping programs.
- Provide snow and ice removal.
- Maintain amenities including pavers, sidewalks, common areas and quasi-public space and crosswalks.
- Occasional activities programming.

¹⁴ See footnote 1 on page 4 of this report.

Maintenance Obligations:

- The Association would take the responsibility for the perpetual maintenance of common space, quasi-public space and recreational space generally available to the entire development.
- The private drive would be the responsibility of the Association.
- Special paving treatment would be the responsibility of the Association.
- Snow and ice removal would be the responsibility of the Association.
- Common utilities, if any, would be the responsibility of the Association.

Operation and Management

- The Association would be managed by a Board of Directors.
- To the extent needed, the day-to-day operations of the Association would be managed by a director and a management company may be retained by the Association.
- The Association would carry appropriate amounts of liability and casualty insurance to cover incidents on the property.

The Hearing Examiner finds that Applicant has sufficiently demonstrated both ownership of the property and its commitment to perpetual maintenance of all recreational and other common or quasi-public areas.

6. The Public Interest

The Applicant must show that the proposed reclassification is sufficiently in the public interest to justify its approval. When evaluating the public interest, the District Council normally considers Master or Sector Plan conformity, the recommendations of the Planning Board and Technical Staff, any adverse impact on public facilities or the environment and public benefits such as provision of housing near a Metro station.

The issue of Sector Plan conformance was considered in Part III.D.3. of this report. As outlined therein, Applicant's proposal is consistent with the recommendations, goals and objectives of the 1994 Bethesda CBD Sector Plan.

The Planning Board and its Technical Staff supported the proposed rezoning. The application for rezoning was reviewed by the Technical Staff, and in an amended report dated August 31, 2012, Staff recommended approval of the application (Exhibit 37). The Planning Board considered the

application on September 13, 2012 and, by a vote of 4 to 0, recommended approval, with additional textual binding elements to which the Applicant has agreed. The Board's recommendation is contained in a letter to the Hearing Examiner dated September 19, 2012. Exhibit 42.

The impact on public facilities was discussed in Part. III. D.4. of this report. The evidence indicates that transportation, schools and water and sewer services would not be adversely affected by the proposed development.

The proposed project will bring an attractive residential development within walking distance of a Metro Station, and will provide streetscape improvements. The only opposition to this project comes from a neighbor concerned about the adequacy of parking, and it is uncontroverted in the record that Applicant will provide all the required parking spaces. The project has been supported by other neighbors. *See* Exhibits 40 and 41.

For the reasons discussed at length in this report, the Hearing Examiner concludes that the proposed development would be in the public interest.

C. Conclusion

Based on the foregoing analysis, and after a thorough review of the entire record, I reach the following conclusions:

1. The proposed development satisfies the intent, purpose and standards of the TS-R Zone, and meets the requirements set forth in Section 59-D-1.61 of the Zoning Ordinance;
2. The application proposes a development that would be compatible with development in the surrounding area; and
3. The requested reclassification to the TS-R Zone has been shown to be in the public interest.

VI. RECOMMENDATION

I, therefore, recommend that Zoning Application No. G-908, requesting reclassification from the R-60 Zone to the TS-R Zone of approximately 6,525 square feet of land described as Lot 20, Block 13A in the Edgemoor Subdivision of Bethesda, and located at 4825 Montgomery Lane, in the 7th Election District, be approved in the amount requested and subject to the specifications and requirements of the revised Development Plan, Exhibit 60(a), provided that the Applicant submits to the Hearing Examiner for certification a reproducible original and three copies of the Development Plan approved by the District Council within 10 days of approval, as required under Code §59-D-1.64.

Dated: November 7, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Martin L. Grossman". The signature is fluid and cursive, with the first name "Martin" being more prominent.

Martin L. Grossman
Hearing Examiner